

AGREEMENT OF PURCHASE AND SALE

SOME DEFINED TERMS

EFFECTIVE DATE: November 1, 1993

BUYER: Rhone-Poulenc Inc., a New York corporation

BUYER'S ADDRESS: CN 5266
Black Horse Lane
Monmouth Junction, New Jersey 08852
Attn: Senior Corporate Counsel
Telephone: (908) 821-3366
Facsimile: (908) 821-2787

SELLER: Sandoz Agro, Inc., a New York corporation

SELLER'S ADDRESS: Sandoz Agro, Inc.
1300 East Touhy Avenue
Des Plaines, Illinois 60018
Attention: Robin M. Demouth, General Counsel
Telephone: (708) 390-3930
Facsimile: (708) 390-3940

LAND: That certain land more particularly described in Exhibit A attached hereto,
commonly referred to as 1990 Bay Road.

PURCHASE PRICE: \$300,000.00

DEPOSIT: \$30,000.00

**DUE DILIGENCE
PERIOD:** Five (5) Business Days After Buyer's Receipt of Survey

TITLE COMPANY and
ESCROW HOLDER:

Commonwealth Land Title Company
151 West 20th Avenue
San Mateo, CA 94403
Attention: Ms. Judy Brown
(Escrow No. 9342459)

SCHEDULED CLOSING

DATE: On or Before November 30, 1993

CLOSING COST ALLOCATIONS:

- BUYER:	TITLE INSURANCE PREMIUMS	100%
	ESCROW FEES	100%
- SELLER:	COUNTY DOCUMENTARY TRANSFER TAXES	100%
	ANY CITY TRANSFER TAXES	100%
	RECORDING FEES	100%
	ALTA SURVEY	100%

BROKER: None

The foregoing Some Defined Terms are incorporated by reference into the attached Agreement.

BUYER (*JP*) AND SELLER (*JB*) AGREE.

TABLE OF CONTENTS

	Page
1. Purchase and Sale of Land	2
2. Purchase Price; Deposit	3
2.1 Deposit	3
2.2 Cash at Closing	3
3. Remedies; Liquidated Damages	3
4. Due Diligence	3
4.1 Available Information	3
4.2 Survey	4
4.3 Title	4
4.4 Inspection	4
4.5 Confidentiality	4
4.6 General Conditions	5
5. Status	5
5.1 Disclaimers	5
5.2 Release; Indemnification	5
6. Grant Deed	6
7. Conditions Precedent	6
7.1 Seller	6
7.2 Buyer	7
8. Escrow	7
8.1 Time	7
8.2 Documents	8
8.3 Procedure	8
8.4 Escrow Instructions	8
8.5 Closing Costs and Prorations	8
9. Brokerage Commission	9
10. Condemnation	9
11. Representations and Warranties	9
11.1 Buyer	9
11.2 Seller	10

12.	Environmental Representations, Warranties and Indemnities	11
12.1	Buyer's Representations	11
12.2	Seller's Representations	12
12.3	Buyer's Remedial Obligations	13
12.4	Seller's Remedial Obligations	13
12.5	Buyer's Indemnification Obligations	14
12.6	Seller's Indemnification Obligations	15
12.7	Termination and Merger of Prior Agreements	16
12.8	Survival of Seller's Indemnity Claims	16
12.9	Survival of Representations and Warranties	16
12.10	Arbitration	16
13.	Miscellaneous	17
13.1	Indemnity	17
13.2	Successors and Assigns	17
13.3	Entire Agreement	17
13.4	Attorneys' Fees	17
13.5	Governing Law	17
13.6	Further Assurances	17
13.7	Severability	17
13.8	Notices	18
13.9	Counterparts	18
13.10	Time	18
13.11	Nonwaiver	18
13.12	Survival	18
13.13	Captions	18
13.14	Exhibits	18
13.15	Construction	19
13.16	Confidentiality	19

EXHIBITS: A - Legal Description of Land
B - Form of Deed
C - Buyer's Chemical List
D - Seller's Chemical List
E - Exceptions From Substantial Compliance With Environmental Laws
F - RCAA Chemical List

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement"), dated as of the Effective Date, is made between Seller and Buyer.

THIS AGREEMENT IS ENTERED on the basis of the following facts, intentions and understandings of the parties:

A. Seller is the owner of certain improved real property located in the City of East Palo Alto, County of San Mateo, State of California. The real property, exclusive of the improvements thereon, is hereinafter referred to as the "Land". The Land includes the asphalt cap on the real property and any monitoring wells located on the real property. A legal description of the Land is more particularly described in Exhibit A, attached hereto.

B. Seller and Catalytica, Inc. ("Catalytica") entered an Agreement For Purchase and Sale of Assets ("Catalytica Sales Agreement") dated as of October 29, 1993, pursuant to which Catalytica is to simultaneously acquire from Seller the improvements, fixtures and equipment (collectively, "Improvements") located on the Land. Close of escrow for transfer of the Improvements from Seller to Catalytica pursuant to the Catalytica Sales Agreement is to occur concurrently with the close of escrow for transfer of the Land from Seller to Buyer pursuant to the terms of this Agreement.

C. The Land and Improvements are hereinafter collectively referred to as the "Property".

D. Catalytica and Buyer are entering a lease ("Ground Lease") pursuant to which Catalytica will lease the Land from Buyer on a long term basis, effective immediately upon close of escrow and transfer of the Land from Seller to Buyer in accordance with the terms of this Agreement.

E. Buyer or Buyer's predecessors in interest previously owned and occupied the Property from 1926 until May 1972. Buyer or Buyer's predecessors in interest used the Property between 1926 and July 1971 for the manufacture and formulation of organic and inorganic pesticides and herbicides.

F. Seller's predecessor in interest purchased the Property from Buyer in May 1972. Seller or Seller's predecessor in interest used the Property for the manufacture of biorational organic chemicals between May 1972 and February, 1993.

G. As a result of the operations of Buyer or Buyer's predecessor in interest between 1926 and 1971, the Land is contaminated with arsenic and other heavy metals. Buyer has performed an extensive investigation of this contamination between

approximately 1983 and the date of this Agreement. Buyer has also performed remedial action including excavation and removal or chemical treatment of soil contaminated with arsenic or heavy metals. Contaminated soil exists beneath portions of the Land covered with pavement or structures which have not been treated or otherwise remediated.

H. Seller is in the process of closing its chemical manufacturing operation at the Property. Seller has performed certain remedial actions beneath and within the Improvements to excavate and remove soil, debris and concrete contaminated with organic chemicals used or manufactured by Seller during its occupancy of the Property.

I. Seller and Catalytica have entered into a material supply agreement under which Catalytica will produce R-2-2 [2-chloro-4-(trifluoromethyl) anilino]-3-methyl-butanoic acid ("RCAA") for sale to Seller.

J. Buyer and Seller previously executed an Agreement of Release and Indemnification dated February 7, 1986, regarding arsenic and heavy metal contamination caused by Buyer's prior operations on the Property. Under the Agreement of Release and Indemnity, Buyer agreed to perform remedial action regarding arsenic and heavy metal contamination on the Land and to indemnify and hold harmless Seller for such contamination. As partial consideration for this Agreement, Buyer and Seller agree and stipulate that as between Buyer and Seller, any and all rights, duties and obligations of Buyer and Seller to each other or to third parties under the "Agreement of Release and Indemnification" shall be terminated and merged into this Agreement.

K. In addition to other studies performed on behalf of Buyer, Buyer's consultant, Geomatrix Consultants, has conducted a Preliminary Site Assessment of the Property and has provided its Preliminary Site Assessment Report to both Buyer and Seller. Buyer and Seller acknowledge receipt of the Preliminary Site Assessment Report and both acknowledge their awareness of its findings. Seller's acknowledgement is not intended and should not be construed as an agreement that the findings of the Preliminary Site Assessment are correct or accurate.

L. Seller desires to sell the Land to Buyer, and Buyer desires to purchase the Land from Seller, in accordance with the terms of this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties, the parties hereby agree as follows:

1. **Purchase and Sale of Land.** Seller shall sell the Land to Buyer, and Buyer shall purchase the Land from Seller, on the terms, covenants and conditions hereinafter set forth.

2. **Purchase Price: Deposit.** Subject to the closing adjustments and prorrations hereafter described, Buyer shall pay the Purchase Price to Seller in the following manner:

2.1 **Deposit.** Upon execution of this Agreement, Buyer and Seller shall open an escrow account ("Escrow") with Escrow Holder, and Buyer shall deposit with Escrow Holder by cashier's check cash in an amount equal to the Deposit. Escrow Holder shall place such funds in an interest-bearing account at an institution acceptable to Buyer and Seller, to be held as a deposit on account of the Purchase Price. The Deposit and all interest earned thereon shall hereinafter collectively be referred to as the "Earnest Money Deposit." Upon the Close of Escrow (as hereinafter defined), the Earnest Money Deposit shall be applied against the Purchase Price.

2.2 **Cash at Closing.** On or before the Close of Escrow, Buyer shall deposit with Escrow Holder by immediately available federal wire transfer or cashier's check cash in an amount equal to the difference between the Purchase Price and the Earnest Money Deposit, plus or minus the closing adjustments and prorrations.

3. **Remedies: Liquidated Damages.** If the transaction contemplated hereunder does not close as a result of a default by Seller, Buyer's sole remedy shall be either (but not both) (i) the return of the Earnest Money Deposit (with Buyer thereby waiving any other remedy, including specific performance, which Buyer may have against Seller), or (ii) an action for specific performance of this Agreement (with Buyer thereby waiving any other remedy which Buyer may have against Seller). IF THE TRANSACTION CONTEMPLATED HEREUNDER IS NOT CONSUMMATED DUE TO A DEFAULT BY BUYER, ESCROW HOLDER SHALL DISBURSE THE EARNEST MONEY DEPOSIT TO SELLER, AND SELLER SHALL RETAIN THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES AND AS SELLER'S SOLE REMEDY, PROVIDED, HOWEVER, THAT BUYER'S OBLIGATIONS UNDER SECTION 4.5 SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PARTIES AGREE THAT SELLER'S ACTUAL DAMAGES AS A RESULT OF BUYER'S DEFAULT WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, AND THE EARNEST MONEY DEPOSIT IS THE BEST ESTIMATE OF THE AMOUNT OF DAMAGES SELLER WOULD SUFFER AS A RESULT OF SUCH DEFAULT. THE PARTIES WITNESS THEIR AGREEMENT TO THIS LIQUIDATED DAMAGES PROVISION BY INITIALLING THIS SECTION:

Seller: 

Buyer: 

4. **Due Diligence.**

4.1 **Available Information.** Seller shall make available to Buyer no later than five (5) business days after the Effective Date the following documents (the "Due Diligence Materials"):

4.1.1 Real Estate Tax Bills. Copies of the bills issued for the most recent tax year for all real estate taxes for the Land (and Improvements).

4.1.2 Records, Plans and Surveys. Copies, to the extent in Seller's possession, of (i) environmental reports relating to the Land, (ii) notices from governmental or public agencies with respect to the Land, (iii) a list of hazardous substances that may be in use on the Land and which have been reported to Seller, other than those hazardous substances commonly used in the operation and maintenance of an industrial building, and (iv) any surveys respecting the Land.

4.2 Survey. Not later than the Effective Date, Seller shall make available to Buyer a current ALTA survey ("Survey") of the Land. The Survey shall be prepared at Seller's expense.

4.3 Title. Within five (5) days after the Effective Date, Buyer shall obtain a current preliminary title report ("Title Report") for the Land prepared by the Title Company, together with a copy of the documents listed as exceptions therein.

4.4 Inspection.

4.4.1 Right of Entry. Provided that Buyer is not in default hereunder, Buyer shall have the right, during the Due Diligence Period and subject to the terms and conditions of Section 4.5 below, to enter the Land to inspect it, upon reasonable notice to Seller.

4.4.2 Indemnity; Return; Copies. Buyer shall indemnify, defend and hold Seller harmless from and against any cost, expense, claim, liability or demand, including reasonable attorneys' fees, arising from the inspection and entry by Buyer or from damages caused by performance of any testing or other investigations of the Land (or Improvements) by Buyer. If this transaction does not close for any reason, Buyer shall return the Land (and Improvements) to the same condition it was in prior to Buyer's entry excepting changes in condition caused by Catalytica or its agents. Buyer shall deliver to Seller copies of all tests, reports or inspections with respect to the Land and conducted during entry prior to closure. Buyer's obligations under this Section 4.5 shall survive termination of this Agreement.

4.5 Confidentiality. All information furnished by Seller to Buyer, or by Buyer to Seller, or their respective representatives, consultants, agents, architects, independent contractors, attorneys or surveyors shall be held in strict confidence by the party receiving such information and shall not be disclosed to any third party, except representatives who need access to the information to complete performance of their duties to Buyer or Seller. All information furnished by Seller or Buyer to any other party shall be deemed to be proprietary in nature and shall be kept confidential except for disclosure to any governmental authority to which such disclosure is required by law. If this Agreement is terminated prior to Close of Escrow, neither Buyer nor Seller nor

their representatives shall retain any such information in their files and shall not use to their commercial advantage any information obtained concerning products, customers or other information which reasonably could be presumed to be of a proprietary or confidential nature.

4.6 General Conditions. Buyer shall have the right to review and approve, during the Due Diligence Period, the Due Diligence Materials, title to the Land and any physical or other items set forth in Sections 4.1 through 4.4. If Buyer does not approve or waive each such item on or before the expiration of the Due Diligence Period, this Agreement shall terminate, all rights and obligations hereunder of each party (other than Buyer's indemnity under Section 4.5) shall be terminated and the Earnest Money Deposit shall be returned to Buyer. Buyer's and Seller's consent to the Close of Escrow shall waive any remaining condition precedent.

5. Status.

5.1 Disclaimers. Except as otherwise specifically stated in this Agreement, Buyer and Seller hereby specifically disclaim any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of the Land, including, but not by way of limitation, the water, soil, geology, environmental conditions (including the presence or absence of any hazardous or toxic materials), and the suitability thereof and of the Land for any and all activities and uses which Buyer may elect to conduct thereon; (ii) the nature and extent of any right-of-way, lease, possessory interest, lien, encumbrance, license, reservation, condition or otherwise; and (iii) the compliance of the Land or its operation with any laws, ordinances or regulations of any government or other body. Except to the extent provided otherwise in Section 12, the sale of the Land as provided for herein is made on an "AS IS" basis, and Buyer expressly acknowledges that, in consideration of the agreements of Seller herein, and except as otherwise expressly specified herein, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE LAND.

5.2 Release; Indemnification. With the exception of a default of any representation or warranty of Seller specifically set forth in this Agreement and Seller's remedial and indemnity obligations under Sections 12.4 and 12.6, from and after the Close of Escrow, Buyer and its agents, affiliates, successors and assigns, shall be solely liable for, and shall indemnify, defend and hold harmless Seller, its agents, affiliates, successors and assigns from any and all costs, expenses, claims, liabilities and demands (including reasonable attorneys' fees) at law or in equity, whether known or unknown, arising out of the physical, environmental, economic, legal or other condition of the Land (collectively referred to hereinafter as "Claims"); and, with the exception of (i) a default of any representation or warranty of Seller specifically set forth in this Agreement and (ii) Seller's remedial and indemnity obligations under Sections 12.4 and 12.6, Buyer

hereby releases and forever discharges Seller, its agents, affiliates, successors and assigns from any and all Claims which Buyer has or may have in the future. Buyer specifically waives the protections of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Buyer () agrees.

Buyer hereby specifically acknowledges that Buyer has carefully reviewed this Section, and discussed its import with legal counsel, is fully aware of its consequences, and that the provisions of this Section are a material part of this Agreement.

5.3 Indemnification. Seller shall be solely liable for, and shall indemnify, defend and hold harmless Buyer, its agents, its affiliates, its successors and assigns from, any and all costs, expenses, claims, liabilities and damages (including reasonable attorneys' fees), at law or equity, whether known or unknown, arising out of (i) a default of any representation or warranty of Seller set forth in this Agreement and (ii) Seller's remedial and indemnity obligations under Sections 12.4 and 12.6.

6. Grant Deed. Seller shall convey to Buyer good and marketable title to the Land by grant deed ("Deed") in the form attached hereto as Exhibit B. The Deed also shall include any deed restrictions required by any local, state or federal governmental agency, which deed restrictions may limit the use of the Property and Improvements on account of the presence of arsenic and/or heavy metals on, under, around or adjacent to the Property. Good and marketable title shall mean that Title Company will issue, upon payment of Title Company's regularly scheduled premium, an extended owner's form policy of ALTA title insurance in the amount of the Purchase Price showing title to the Land vested of record in Buyer, subject only to the Permitted Conditions (as hereinafter defined).

7. Conditions Precedent. In addition to the documents and funds which must be placed into Escrow prior to the Close of Escrow as detailed in Section 8, the following are conditions precedent to the Close of Escrow:

7.1 Seller. Seller's conditions precedent to the Close of Escrow are the following:

7.1.1 No suit, action or other proceeding shall be pending or threatened which seeks, nor shall there exist any judgment the effect of which is, to restrain the purchase and sale of the Land;

7.1.2 Buyer's representations and warranties set forth herein shall be true and correct; and

7.1.3 Concurrent closing for the transfer of the Improvements to Catalytica pursuant to the Catalytica Sales Agreement.

7.2 Buyer. Buyer's conditions precedent to the Close of Escrow are the following:

7.2.1 Buyer's inspection and approval during the Due Diligence Period of the Due Diligence Materials, the Title Report and all other physical, environmental, legal and any other matters relating to the Land, as Buyer may, in Buyer's sole discretion, elect to investigate;

7.2.2 The willingness of Title Company to issue, upon the sole condition of the payment of its regularly scheduled premium, an ALTA owner's form policy of title insurance (the "Title Policy"), insuring Buyer in the amount of the Purchase Price that fee simple title to the Land is vested in Buyer as of the Close of Escrow, subject only to the exceptions to title ("Permitted Exceptions") which are: (i) in the Title Report and approved by Buyer, as evidenced by a written notice of approval delivered by Buyer to Seller during the Due Diligence Period or (ii) caused by Buyer's activities;

7.2.3 The Ground Lease being executed by Catalytica and Buyer;

7.2.4 As of the Close of Escrow,

7.2.4.1 No suit, action or other proceeding shall be pending or threatened which seeks, nor shall there exist any judgment the effect of which is, to restrain the purchase and sale of the Land; and

7.2.4.2 Seller's representations and warranties set forth herein shall be true and correct.

7.2.5 Buyer's Board of Directors' approval of the execution and delivery of this Agreement and the Purchase Price (i.e., Three Hundred Thousand Dollars (\$300,00.00)).

8. Escrow.

8.1 Time. Escrow shall close ("Close of Escrow") when all documents and funds specified in this Section 8 have been deposited into Escrow. Seller and Buyer may mutually extend the Close of Escrow in writing.

8.2 Documents. On or before the Close of Escrow, the parties shall deposit into Escrow the funds and documents described below.

8.2.1 Seller. Seller shall deposit the following:

8.2.1.1 The duly executed and acknowledged Deed;
and

8.2.1.2 Such other documents and funds, including without limitation, escrow instructions, as may be reasonably required of Seller to close the transaction in accordance with this Agreement.

8.2.2 Buyer. Buyer shall deposit the following:

8.2.2.1 The remainder of the Purchase Price;

8.2.2.2 Additional cash in the amount necessary to pay Buyer's share of the closing costs and prorations, as hereinafter set forth; and

8.2.2.3 Such other documents and funds, including without limitation, escrow instructions, as may be reasonably required of Buyer to close the transaction in accordance with this Agreement.

8.3 Procedure. Escrow Holder shall close Escrow as follows:

8.3.1 Record the Deed and deliver conformed copies thereof to Buyer and Seller;

8.3.2 Deliver the remainder of the Purchase Price to Seller;
and

8.3.3 Deliver the Title Policy issued by Title Company to Buyer.

8.4 Escrow Instructions. This Agreement shall serve as escrow instructions and an executed copy of this Agreement shall be deposited by Seller and Buyer with Escrow Holder following the execution and delivery hereof. The parties agree to execute for the benefit of Escrow Holder such additional escrow instructions as required, provided that the additional escrow instructions do not change the terms of this Agreement but merely offer protection to Escrow Holder.

8.5 Closing Costs and Prorations.

8.5.1 Buyer and Seller shall pay the Closing Costs identified in Some Defined Terms above.

8.5.2 Real property taxes, assessments, if any, and all other customary charges or costs incident to ownership of the Land shall be prorated as of the Close of Escrow.

8.5.3 Buyer and Seller shall each pay their own legal, lending and other fees and expenses incurred in connection with the negotiation, documentation and closing of the contemplated transaction.

9. **Brokerage Commission.** Seller and Buyer each warrants to the other that no person or entity can properly claim a right to a real estate commission, finder's fee or other real estate brokerage-type compensation (collectively, "Real Estate Compensation") based upon the acts of that party with respect to the transaction contemplated by this Agreement. Seller and Buyer each hereby agrees to indemnify and defend the other (by counsel acceptable to the party seeking indemnification) against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, resulting from any claims for Real Estate Compensation by any person or entity based upon such acts.

10. **Condemnation.** In the event that all or any substantial portion of the Land shall be taken in condemnation or under the right of eminent domain after the date of the execution of this Agreement and before the Close of Escrow, Buyer, at its option, may either (a) terminate this Agreement by written notice thereof to Seller and receive an immediate refund of the Deposit, if Buyer is not then in default, or (b) proceed to close the transaction contemplated herein pursuant to the terms hereof, in which event Seller shall deliver to Buyer at the Close of Escrow any proceeds actually received by Seller attributable to the Land from such condemnation or eminent domain proceeding, and there shall be no reduction in the Purchase Price. For the purposes of this provision, a "substantial portion" of the Land shall mean a portion of the Land equal to or greater than twenty percent (20%) of the gross number of square feet of the Land.

11. **Representations and Warranties (Exclusive of Environmental Issues).**

11.1 **Buyer.** Buyer represents and warrants to Seller, which representations and warranties shall survive the execution of this Agreement and the Close of Escrow, the following:

11.1.1 Buyer has (or will have) examined, inspected and conducted its own investigation of all matters with respect to the physical and environmental condition of the Land, taxes, bonds, permissible uses, zoning, covenants, conditions and restrictions and all other matters which in Buyer's judgment bear upon the value and suitability of the Land for Buyer's purposes. Except as provided in Section 12, Buyer acknowledges that the Seller has made no representation of any kind in connection with soils or physical conditions on, or bearing on, the use of the Land and Buyer is relying solely on Buyer's own inspection and examination of such items and not on any representation of Seller;

11.1.2 Buyer is a corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;

11.1.3 Buyer has the full power to execute and deliver and fully perform its obligations under this Agreement;

11.1.4 To the best of Buyer's knowledge, after reasonable inquiry made by Buyer, neither this Agreement nor anything provided to be done hereunder violates or shall violate any contract, agreement or instrument to which Buyer is a party, the effect of which shall be to prohibit or to seek or purport to prohibit Buyer from fulfilling its obligations under this Agreement; and

11.1.5 Buyer has not made (i) a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Buyer's creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of Buyer's assets; (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets; (v) admitted in writing its inability to pay its debts as they become due; or (vi) made an offer of settlement, extension or composition to its creditors generally.

11.2 Seller. Seller represents and warrants to Buyer, which representations and warranties shall survive the execution of this Agreement and the Close of Escrow, the following:

11.2.1 Seller is a corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation; and

11.2.2 Seller has the full power to execute and deliver and fully perform its obligations under this Agreement;

11.2.3 Seller has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Seller's creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets; (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets; (v) admitted in writing its inability to pay its debts as they come due; or (vi) made an offer of settlement, extension or composition to its creditors generally;

11.2.4 To the best of Seller's knowledge, after reasonable inquiry made by Seller, neither this Agreement nor anything provided to be done hereunder violates or shall violate any contract, agreement, or instrument to which Seller is a party, the effect of which shall be to prohibit or to seek or purport to prohibit Seller from fulfilling its obligations under this Agreement; and

11.2.5 To the best of Seller's actual knowledge:

11.2.5.1 The Land is free from mechanics' or materialmen's liens; and

11.2.5.2 There is no pending or threatened litigation, proceedings or governmental action which would affect the Land in a materially adverse manner.

12. Environmental Representations, Warranties and Indemnities.

12.1 Buyer's Representations.

12.1.1 Buyer represents that Buyer or Buyer's predecessors in interest previously owned and occupied the Property from 1926 until May 1972. Buyer or Buyer's predecessors in interest used the Property between 1926 and July 1971 for the manufacture and formulation of organic and inorganic pesticides and herbicides. As a result of the operations of Buyer or Buyer's predecessor in interest between 1926 and 1971, the Property and adjacent properties are contaminated with high levels of arsenic and other heavy metals. Buyer has performed an extensive investigation of this contamination between approximately 1983 and the Effective Date. Buyer has also performed remedial action on the Land and adjacent properties including excavation and removal or chemical treatment of soil contaminated with arsenic or heavy metals. Contaminated soil is present beneath portions of the Land covered with pavement or structures which have not been treated or otherwise remediated. As a result of the investigations and remedial actions performed by Buyer, Buyer represents that it is fully aware of arsenic, heavy metal and organic soil and groundwater contamination on, under, around and adjacent to the Property.

12.1.2 Buyer represents that it has provided Seller with copies of substantially all environmental reports, studies, investigations, and other data prepared by Buyer or on behalf of Buyer regarding environmental contamination of soil and groundwater on, under, around, and adjacent to the Property.

12.1.3 Buyer further represents and warrants that it has complied in all material respects with the obligations imposed by (i) the following orders issued by the California Regional Water Quality Control Board-San Francisco Bay Region ("RWQCB"): Order Nos. 91-016, 91-095, 92-022, 93-27; and (ii) any prior orders issued to Buyer by the RWQCB and the California Department of Toxic Substances ("DTSC") or predecessor agencies.

12.1.4 Buyer hereby warrants and represents that Buyer's predecessors in interest manufactured, formulated, compounded, stored or otherwise possessed on the Property those pesticides and herbicides set forth on Exhibit C ("Buyer's Chemical List"). Buyer acknowledges that Buyer's Chemical List lists only the

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principal active ingredients of each product and does not include a list of chemicals referred to as inert ingredients and does not include chemicals, compounds or materials used by Buyer for any laboratory or experimental purpose, or for maintenance, cleaning and sanitary purposes. Buyer further acknowledges that inert ingredients may have included solvents and other organic chemicals. Some of the active or inert ingredients on Buyer's Chemical List may also be included in the list of chemicals used by Seller or Seller's predecessor in interest set forth in Exhibit D ("Seller's Chemical List").

12.2 Seller's Representations.

12.2.1 Seller's predecessor in interest purchased the Property from Buyer in May 1972. Seller or Seller's predecessor in interest used the Property for the manufacture of biorational organic chemicals between May 1972 and February, 1993. Seller has closed its chemical manufacturing operation at the Property. Seller has performed certain remedial actions inside and beneath the Improvements to excavate and remove soil, concrete and debris contaminated with organic chemicals used or manufactured by Seller or Seller's predecessor in interest during its occupancy of the Property.

12.2.2 Seller represents that it has provided Buyer with copies of substantially all environmental reports, studies, investigations, and other data prepared by Seller or on behalf of Seller regarding contamination of soil and/or groundwater on, under, around or adjacent to the Property and Improvements by chemicals used or manufactured by Seller or Seller's predecessor in interest.

12.2.3 Seller further represents that it is and has operated the Property in substantial compliance with all laws (including common law), rules and regulations pertaining to protection of natural resources, the environment, and the regulations pertaining to hazardous materials, substances and wastes as defined under federal, state and local environmental laws and regulations (collectively, "Hazardous Materials"), except for those matters disclosed in Exhibit E. Seller further represents that with respect to its operations on the Property, it has completed all closures, cleanup, remediation, demolition and removal of Hazardous Materials, chemicals, compounds and other materials, to levels required by federal, state and local laws, regulations and orders of governmental bodies including, without limitation, the U.S. Environmental Protection Agency, RWQCB, the California Environmental Protection Agency, the City of East Palo Alto, the County of San Mateo, and DTSC. Seller further warrants and represents that it has completed or complied with all provisions of its existing or former permits and licenses (including Sandoz permit number CAT000611350), including demolition and other activities at the Land, whether or not required or authorized by any closure plan, except for those matters disclosed in Exhibit E.

12.2.4 Seller hereby warrants and represents that it used, produced, processed, manufactured, stored, compounded and otherwise possessed, at the Property those chemicals set forth on Seller's Chemical List. Seller's Chemical List

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includes all inert ingredients contained in Seller's products but does not include chemicals, compounds and materials used by Seller for any laboratory or experimental purposes or for maintenance, cleaning and sanitary purposes.

12.3 Buyer's Remedial Obligations. Buyer at its sole expense shall implement all soil and/or groundwater investigations, monitoring, remedial action or other response actions required by the RWQCB, DTSC, and/or any local, state or federal agency regarding contamination of the Property with arsenic, heavy metals, and those specific chemicals set forth in Buyer's Chemical List (except as provided in Section 12.4.2), along with precursors, metabolites, breakdown products, and impurities of such enumerated chemicals and inert ingredients associated with the listed chemical products. Such remedial action shall include, but not be limited to, performance of the Uplands Unit Remedial Action, the Wetlands Unit Remedial Action and such other remedial actions as may be required in the future by federal, state or local government agencies. For the purposes of this Agreement, Buyer acknowledges that it has supplied the lists comprising Buyer's Chemical List to Seller and that Seller is relying upon the completeness and accuracy of Buyer's Chemical List. Buyer expressly denies that it is responsible or liable for any organic contamination existing on, under, around or adjacent to the Property except for those organic chemicals specifically set forth in Buyer's Chemical List and inert ingredients associated with the listed chemical products.

12.4 Seller's Remedial Obligations.

12.4.1 Seller at its sole expense shall implement all soil and/or groundwater investigations, monitoring, remedial action or other response actions required by the RWQCB, DTSC, and/or any local, state or federal agency regarding contamination of the Property with those specific chemicals set forth in Seller's Chemical List, along with precursors, metabolites, breakdown products, and impurities of such enumerated chemicals. For the purposes of this Agreement, Seller acknowledges that it has supplied the lists comprising Seller's Chemical List to Buyer and that Buyer is relying upon the completeness and accuracy of Seller's Chemical List.

12.4.2 Seller hereby acknowledges that it has been named as a discharger of organic chemicals in Order 91-016 of the RWQCB. Although Seller expressly denies that it is responsible, or liable for any organic contamination existing on, under, around or adjacent to the Property except for those organic chemicals specifically set forth in Seller's Chemical List, as between Buyer and Seller, Seller shall take the lead responsibility and obligation at its cost to investigate and remediate organic contamination of soil or groundwater on or beneath the Property (including any organic chemicals listed both on Buyer's Chemical List and Seller's Chemical List), provided, however, that Seller shall not be obligated to investigate or remediate any organic contamination which Seller is able to demonstrate by a preponderance of evidence was caused solely by another party.

12.4.3 Seller acknowledges that it has entered into a material supply agreement with Catalytica, under which Catalytica will produce RCAA for sale to Seller. The chemicals which Catalytica will use to manufacture, formulate or compound RCAA for sale to Seller are set forth in Exhibit F ("RCAA Chemical List"). If at any time after the Closing, Seller becomes aware that a release of a specific chemical, compound or material (including metabolites, precursors, breakdown products, and impurities) which is set forth on the RCAA Chemical List has occurred, then Seller shall indemnify Buyer to the extent and in accordance with Section 12.6; provided, however, that such indemnifications shall not apply if Seller demonstrates by a preponderance of the evidence that such costs, liabilities, losses, judgment, damages and expenses were caused solely by Catalytica or its agents, contractors, successors or assigns. Buyer acknowledges that the RCAA Chemical List constitutes a trade secret of Seller and Buyer agrees not to use or divulge Exhibit F or the identity of chemicals on Exhibit F unless disclosure to a government authority is required by law.

12.5 Buyer's Indemnification Obligations

12.5.0 For purposes of Section 12 the word "Chemical" shall also include all precursors, metabolites, breakdown products and impurities of any specific chemical or compound and inert ingredients associated with Buyer's products.

12.5.1 Buyer, its successors and assigns, hereby indemnifies and holds harmless Seller, its successors and assigns, from and against any and all claims, costs, damages, losses, judgments, liabilities, remedial response costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees) associated with or arising from: a) the presence of, migration, movement and/or remediation of arsenic, heavy metals, and other Chemicals set forth on Buyer's Chemical List; and b) expenses in excess of amounts that otherwise would be normally and reasonably incurred by Seller in remediating the Property for Chemicals listed on Seller's Chemical List. Buyer's indemnity obligations under this Section 12.5.1 shall apply with respect to organic Chemicals on both Buyer's Chemical List and Seller's Chemical List only if Seller demonstrates by a preponderance of evidence that contamination by such organic Chemicals was caused solely by Buyer or its predecessors in interest.

12.5.2 Buyer hereby indemnifies and saves harmless Seller from and against all claims, costs, losses, liabilities, judgments, damages and expenses (including reasonable attorneys' and consultants' fees) associated with the transport, shipment or distribution off site by Buyer, its agents or predecessors in interest of any compounds, materials, chemicals or debris (whether or not listed in Buyer's Chemical List), arising from claims or allegations by any third party (including without limitation, federal, state or local governmental bodies) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC §9601 et seq.); Resource Conservation and Recovery Act (42 USC §6901, et seq.); the California Hazardous Substance Account Act (Cal. Health & Safety Code §25300 et seq.); the California Porter Cologne Act (Cal. Water Code §13000 et seq.); and the California

Hazardous Waste Control Law (Cal. Health & Safety Code §25100 et seq.); and any other laws (including common law), rules and regulations pertaining to any off-site treatment, storage and disposal facilities, waste facilities, recycling facilities, landfills, surface impoundments, underground storage containers or tanks, wastewater treatment facilities or any area, facility or location (other than the Land) where materials from the Land are alleged to have been placed, released, stored or treated in connection with Buyer's prior or subsequent operations at the facility, the prior operations of Buyer's predecessors in interest, and/or contractors or consultants of Buyer in the performance of remedial or response actions, including but not limited to, the Uplands Unit Remedial Action and the Wetlands Unit Remedial Action.

12.6 Seller's Indemnification Obligations.

12.6.1 Seller, its successors and assigns, hereby indemnifies and holds harmless Buyer, its successors and assigns, from and against any and all claims, costs, damages, losses, judgments, liabilities, remedial response costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees), associated with or arising from: a) the presence of, migration, movement and/or remediation of Chemicals set forth on Seller's Chemical List; and b) expenses of Buyer associated with remediation in excess of amounts that otherwise would be normally and reasonably incurred by Buyer in remediating the Property for arsenic and other metals pursuant to RWQCB Orders 91-016, 91-095, 92-022, 93-27, and any subsequent orders, and/or remediating those Chemicals on Buyer's Chemical list. Notwithstanding anything to the contrary herein, Seller's indemnity obligations under this Section 12.6.1 shall apply with respect to organic Chemicals on both Seller's Chemical List and Buyer's Chemical List unless and until Seller demonstrates by a preponderance of evidence that contamination by such organic Chemicals was caused solely by Buyer or its predecessors in interest.

12.6.2 Seller hereby indemnifies and saves harmless Buyer from and against all claims, costs, losses, liabilities, judgments, damages and expenses (including reasonable attorneys' and consultants' fees) associated with the transport, shipment or distribution off site by Seller, its agents or predecessors in interest of any compounds, materials, chemicals or debris (whether or not listed in Seller's Chemical List), arising from claims or allegations by any third party (including without limitation, federal, state or local governmental bodies) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC §9601 et seq.); Resource Conservation and Recovery Act (42 USC §6901 et seq.); the California Hazardous Substance Account Act (Cal. Health & Safety Code §25300 et seq.); the California Porter Cologne Act (Cal. Water Code §13000 et seq.); and the California Hazardous Waste Control Law (Cal. Health & Safety Code §25100 et seq.); and any other laws (including common law), rules and regulations pertaining to any off-site treatment, storage and disposal facilities, waste facilities, recycling facilities, landfills, surface impoundments, underground storage containers or tanks, wastewater treatment facilities or any area, facility or location (other than the Land) where materials from the Property are alleged to have been placed, released, stored or treated in connection with

Seller's operation of the Property, and/or contractors or consultants of Seller in the performance of remedial or response actions.

12.6.3 For a period of five years from the effective date of this Agreement, Seller, its successors and assigns, hereby agrees to indemnify and hold harmless Buyer, its successors and assigns, from and against any and all costs, damages, losses, judgments, liabilities, remedial response costs and expenses (including without limitation, reasonable attorneys' and consultants fees) arising from or connected with the abatement, removal and/or disposal of asbestos (including asbestos containing materials) in or from any currently existing structures or improvements on the Land, excepting those costs or damages arising from acts or omissions of Buyer.

12.7 Termination and Merger of Prior Agreements. Seller and Buyer acknowledge and agree that the work to be performed under that certain "Agreement and Release and Indemnification" dated February 7, 1986, between Buyer, Zoecon Corporation, a Delaware corporation, and Occidental Petroleum Corporation, a California corporation, pertaining to the Property has been partially completed. As between Buyer and Seller, Buyer and Seller hereby agree and stipulate that remaining rights, duties and obligations of Buyer and Seller under the "Agreement of Release and Indemnification" are terminated and merged into this Agreement. As between Buyer and Seller, the terms of the "Agreement of Release and Indemnification" shall be of no force or effect. All rights, duties and obligations of Buyer and Seller toward Occidental Petroleum Corporation shall continue to survive and apply. Upon Closing, Buyer shall be entitled to file the Stipulation and Release of litigation as set forth in the "Agreement of Release and Indemnification" to terminate with prejudice the existing lawsuit filed by Zoecon against Buyer, and attendant cross-claims, in the Superior Court for the County of San Mateo, Docket No. 260687.

12.8 Survival of Seller's Indemnity Claims. Buyer acknowledges that Seller has tendered a claim for indemnity and defense regarding the litigation entitled Michael Demeter v. Lauren Boscacci, et al. in the Superior Court for the County of San Mateo, Docket No. 354652. Buyer and Seller agree that Seller's claim for indemnity and defense regarding this litigation shall survive termination of the "Agreement of Release and Indemnification." Buyer and Seller agree to meet and resolve Seller's claim for indemnity and defense on an expeditious basis following Closing.

12.9 Survival of Representations and Warranties. The indemnifications, warranties, representations and undertakings set forth in this Section 12 hereof shall expressly survive Closing.

12.10 Arbitration. Any controversy or claim arising out of or relating to this Article 12 or the breach thereof shall be settled by binding arbitration by a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association in San Francisco, California, and a judgment upon the

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award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitration award shall be in writing and shall specify the factual and legal basis for the award. The parties shall each select one arbitrator who shall in turn select a third arbitrator. The arbitrators shall include as part of their award, the amount of all legal fees and costs expended by the prevailing party arising from the arbitration.

13. Miscellaneous.

13.1 Indemnity. Buyer shall indemnify and defend Seller against and hold Seller harmless from any and all losses, costs, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) arising out of any claims, actions, suits or proceedings that may be made, asserted or commenced by reason of any event or transaction relating to the Land or any portion thereof that occurs subsequent to the Close of Escrow except for the following: (i) any claim regarding Seller's representations or warranties set forth in Section 11.2.; (ii) claims brought as a result of Seller's representations contained in Section 12.2; and (iii) any liabilities or costs arising from Seller's remedial or indemnity obligations set forth in Sections 12.4 and 12.6.

13.2 Successors and Assigns. This Agreement shall be binding upon the heirs, executors, administrators, and successors and assigns of Seller and Buyer; provided, however, Buyer shall not assign Buyer's rights and obligations hereunder to any party without the prior written consent of Seller.

13.3 Entire Agreement. This Agreement contains all of the covenants, conditions and agreements between the parties and shall supersede all prior correspondence, agreements and understandings, both oral and written.

13.4 Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, or to recover damages for breach of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs.

13.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13.6 Further Assurances. Seller or Buyer shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered at or after the Close of Escrow any and all acts, deeds and assurances as either party or the Escrow Holder may reasonably require in order to carry out the intent and purpose of this Agreement.

13.7 Severability. In case any one or more of the provisions contained in this Agreement for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect

any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13.8 Notices. Whenever Escrow Holder or any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal service or by certified, registered or Express United States Mail, or Federal Express or other nationally recognized commercial courier, postage prepaid, addressed as set forth above. Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.

13.9 Counterparts. This Agreement may be executed in one (1) or more counterparts, and all the counterparts shall constitute but one and the same agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.

13.10 Time. Time is of the essence of every provision herein contained.

13.11 Nonwaiver. Unless otherwise expressly provided herein, no waiver by Seller or Buyer of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to Seller or Buyer upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller or Buyer of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition. All rights or remedies afforded to Seller or Buyer hereunder or by law shall be cumulative and not alternative, and the exercise of one right or remedy shall not bar other rights or remedies allowed herein or by law.

13.12 Survival. Each of the terms, covenants and conditions of this Agreement required to be operative after delivery of the Deed to Buyer shall be so operative and shall not be deemed to have merged into the Deed. Survival of the terms, covenants and conditions shall extend to the representations, warranties and indemnities set forth in Section 5.2, Section 5.3, Section 11, Section 12 and Section 13.1.

13.13 Captions. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

13.14 Exhibits. All exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.

13.15 Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

13.16 Confidentiality. Buyer and Seller agree to keep confidential, and not publicly disclose, the existence and/or terms of this Agreement and the transaction contemplated hereby; provided, however, that both Seller and Buyer may disclose the existence and terms of this Agreement to: (i) their respective consultants, agents, architects, independent contractors, attorneys or surveyors associated with the purchase and sale of the Land, (ii) any governmental authority to which such disclosure is required by law, or (iii) any third party to whom the non-disclosing party to this Agreement has given their prior written consent for such a disclosure.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date(s) set forth below, in one or more counterparts as of the Effective Date.

Seller:

Sandoz Agro, Inc., a New York corporation

By: 

Its:  President

Date: 11/29/93

Buyer:

Rhone-Poulenc Inc., a New York corporation

By: 

Its:  Director of Real Estate and
Facilities Management

Date: November 24, 1993

RE REQUESTED BY

A. Br. Wilmore, Esq.

AND WHEN RECORDED MAIL TO:

Rhone-Poulenc, Inc.
CN 5266
Monmouth Junction, NJ 08852
Attn: Senior Corporate Counsel

EXHIBIT B

MAIL TAX STATEMENTS TO:

Rhone-Poulenc, Inc.
CN 5266
Monmouth Junction, NJ 08852
Attn: Senior Corporate Counsel

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corporation Grant Deed

A.P.R.

The undersigned Grantor(s) declare(s):

Documentary transfer tax is \$ _____

- () computed on full value of property conveyed, or
() computed on full value less value of liens and encumbrances remaining at time of sale.
() Unincorporated area; (X) City of East Palo Alto, and

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Sandoz Agro Inc.,
a corporation organized under the laws of the State of Delaware,

hereby GRANTS to Rhone-Poulenc, Inc., a New York corporation,

all that real property situated in the City of East Palo Alto, County of San Mateo, State of California,
described as follows:

See Exhibit 1, attached hereto and incorporated herein by this reference.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument
to be executed by _____, its President and _____, its Secretary thereto duly authorized.

Dated: _____

STATE OF CALIFORNIA
COUNTY OF _____, ss.

By _____,
President

On _____ before me, the undersigned, a Notary
Public, personally appeared _____ and _____, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the per-
sons whose names are subscribed to the within instrument and as-
sented to me that they executed the same in their authorized
capacities, and that by their signatures on the instrument the per-
sons, or the entity upon behalf of which the persons acted, exe-
cuted the instrument.

By _____,
Secretary

WITNESS my hand and official seal.

Signature _____

(This area for official notarial seal)

Title Order No. _____

Exhibit or Loan No. _____

EXHIBIT C

BUYER'S CHEMICAL LIST

<u>Chemical</u>	<u>Active Ingredient</u>
Atlas WFAC	sodium chloride
Atlas A	sodium arsenite
Atlas A-6	sodium arsenite
Bromicil-5 (Bretab)	Bromicil and 2,3,6-Trichlorobenzoic acid (< 1%)
Chlorax 285	sodium chlorate sodium metaborate
Chlorax 40 + Shed-A-Leaf	sodium chlorate (40%) sodium metaborate (60%)
Chlorax Liq. S.F.2	sodium chlorate
Chlorea 125	sodium chlorate sodium metaborate, monuran
Chlorea 3	sodium chlorate sodium metaborate, monuran
Shed-A-Leaf	sodium chlorate
Sodium Metaborate	sodium metaborate

EXHIBIT A

THE LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO, CITY OF EAST PALO ALTO, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE CENTER LINE OF BAY ROAD, AT A POINT DISTANT THEREON NORTH 65° 11' EAST 1383.36 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH THE EASTERLY RIGHT OF WAY LINE OF A SPUR TRACK RUNNING TO THE PROPERTY FORMERLY BELONGING TO THE REED REDUCTION CO., SAID POINT OF BEGINNING ALSO BEING DISTANT NORTH 65° 11' EAST 430.60 FEET ALONG SAID CENTER LINE OF BAY ROAD. FROM THE INTERSECTION THEREOF WITH THE CENTER LINE OF PULGAS AVENUE, SAID LAST MENTIONED INTERSECTION BEING MARKED ON THE GROUND BY A RAILROAD SPIKE DRIVEN INTO THE MACADAM PAVEMENT ON SAID BAY ROAD; RUNNING THENCE FROM SAID POINT OF BEGINNING SOUTH 24° 49' EAST PARALLEL WITH THE CENTER LINE OF PULGAS AVENUE, A DISTANCE OF 525 FEET; THENCE NORTH 65° 11' EAST, PARALLEL WITH THE CENTER LINE OF BAY ROAD, A DISTANCE OF 430.60 FEET TO AN IRON PIPE MONUMENT; THENCE NORTH 24° 49' WEST 525 FEET (AT 500 FEET AN IRON PIPE MONUMENT) TO THE CENTER LINE OF BAY ROAD AND THENCE ALONG SAID CENTER LINE SOUTH 65° 11' WEST 430.60 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF THE RANCHO DE LAS PULGAS.

APN: 063-240-020

JFN: 063-024-240-02 A

EXHIBIT D

SELLER'S CHEMICAL LIST

[attached]

EAST PALO ALTO CHEMICAL USE HISTORY - 1991

19-Aug-92

PAGE 1

Product Description	Product Number	Vendor	QTY RCY in 1991
TOLUENE BULK		102400	
* 1991 TOTAL FOR PROD			82,731.600
CAUSTIC SODA 50% BULK S		102800	
* 1991 TOTAL FOR PROD			305,001.000
SULFURIC ACID 93% 750LB/D		8011 102800	
* 1991 TOTAL FOR PROD			176,250.000
HYDROCHLORIC ACID 32% 500		8011 102800	
* 1991 TOTAL FOR PROD			130,000.000
NITROGEN		2011	
* 1991 TOTAL FOR PROD			7,879,289.000
ETHYLENE GLYCOL 515 LB/DI		100520	
* 1991 TOTAL FOR PROD			11,330.000
METHANOL BULK		8011 90011	
* 1991 TOTAL FOR PROD			284,273.200
ACETIC ACID ELAC. (450LB/D)		102800	
* 1991 TOTAL FOR PROD			900.000
AEROSIL200(CAB-O-SIL)10LB		100500	
* 1991 TOTAL FOR PROD			150.000
ALUMINA ACTIVATED 100 LB/		102520	
* 1991 TOTAL FOR PROD			2,000.000
AMMONIA ANHYDROUS S		101350	
* 1991 TOTAL FOR PROD			8,400.000
ATLOX 3404 F 4500 DRUM		43011	
* 1991 TOTAL FOR PROD			450.000
BENZENITROL (450 LB/DR) S		43011	
* 1991 TOTAL FOR PROD			1,350.000
CORN OIL		902465	
* 1991 TOTAL FOR PROD			71.500
CUPROUS CYANIDE S		102050	
* 1991 TOTAL FOR PROD			100.000
DARCO B-60 CHARCOAL 40 LB		102800	
* 1991 TOTAL FOR PROD			4,800.000
DCBT		57021	
* 1991 TOTAL FOR PROD			127,400.000

EAST I) ALTO CHEMICAL USE HISTROY - 1)

19-Aug-92

PAGE 2

Product Description	Product Number	Vendor#	QTY RCV in 1991
S DI-METHYL OCTANAL * 1991 TOTAL FOR PROD		83011	5,000.000
DI-METHYL OCTANAL 364 LB/ * 1991 TOTAL FOR PROD		101930	12,382.000
DIMETHYL FORMAMIDE 420 LB * 1991 TOTAL FOR PROD		102880	10,780.000
DRY ICE BLOCK * 1991 TOTAL FOR PROD		100070	22,000.000
ETHANOL DENATURED 200 PRO * 1991 TOTAL FOR PROD		102805	43,093.600
ETHYL BROMIDE * 1991 TOTAL FOR PROD		101230	3,250.000
ETHYLENEDIAMINE (413 LB/D * 1991 TOTAL FOR PROD		89011	1,239.000
SAFACPE-510 460 LB/DR * 1991 TOTAL FOR PROD		101235	460.000
GELVATOL 40/10 * 1991 TOTAL FOR PROD		2011	350.000
HEXANE, 5 DEGREE BULK * 1991 TOTAL FOR PROD		8011 102400 90011	211,062.000
HEXANEDIAMINE (30K6/DR) * 1991 TOTAL FOR PROD		100930	66.150
HYDROXY ACETIC ACID 550 L * 1991 TOTAL FOR PROD		102880	550.000
IGEPAL * 1991 TOTAL FOR PROD		102358	460.000
KELZAN-S * 1991 TOTAL FOR PROD		47011	150.000
LACTIC ACID/USP 545 LB/DR * 1991 TOTAL FOR PROD		102860	2,248.000
MAGNESIUM 150 LB/DR * 1991 TOTAL FOR PROD		102330	500.000
METHANE SULFONYL CHLORIDE * 1991 TOTAL FOR PROD		59011	1,200.000

EAST F. ALTO CHEMICAL USE HISTORY

15.

19-Aug-92

PAGE 3

Product Description	Product Number	Vendor#	QTY RCV in 1991
METHOXY CITRONELLAL 386 R - * 1991 TOTAL FOR PROD		102825	30,108.000
S-METHOXY CITRONELLAL * 1991 TOTAL FOR PROD		83011	27,600.000
N-METHYLPYRROLIDONE * 1991 TOTAL FOR PROD		101130	66,240.000
METHYL ISODEHYDROACETATE() * 1991 TOTAL FOR PROD		30011	73,025.000
OLEYL ALCOHOL 385 LB/DR * 1991 TOTAL FOR PROD		101330	3,080.000
POTASSIUM CARBONATE 50 L * 1991 TOTAL FOR PROD		102050	81,295.150
PROXEL GXL * 1991 TOTAL FOR PROD		100871	441.000
PICOLINE, MIXED * 1991 TOTAL FOR PROD		102370	3,351.600
SODIUM BICARBUSP 100 LB/BS * 1991 TOTAL FOR PROD		102880	1,500.000
SODIUM BROMIDE 400 R * 1991 TOTAL FOR PROD		102880	1,570.000
SODIUM METHYLATE 25% 425 R * 1991 TOTAL FOR PROD		101362	94,920.000
TENNECO 500 - 100 * 1991 TOTAL FOR PROD		100520	3,168.000
TEREPHTHALOYL-CHLORIDE 300R * 1991 TOTAL FOR PROD		102790	3,300.000
TETRAHYDROFURAN/(THF) 400 R * 1991 TOTAL FOR PROD		6011	6,800.000
TETRAISOPROPYL-TITANATE * 1991 TOTAL FOR PROD		102680	65,280.000
TRIETHYLAMINE 330 LB/DR * 1991 TOTAL FOR PROD		59011	1,320.000
D-VALINE/50 KG/DR * 1991 TOTAL FOR PROD		100755	79,344.000
VAZO 64 50 LB * 1991 TOTAL FOR PROD		29011	1,250.000

EAST PALO A) CHEMICAL USE HISTORY - 1991

pt 4

19-Aug-92

Product Description	Product Number	Vendor	QTY RCY in 1991
MORFOX 9-S * 1991 TOTAL FOR PROD		101954	900.000
PROPARGYL-ALCOHOL 410 LB/ * 1991 TOTAL FOR PROD		101130	4,100.000
THIONYL CHLORIDE * 1991 TOTAL FOR PROD		57011	4,350.000
ATLOX3409 F * 1991 TOTAL FOR PROD		43011	900.000

EAST PALO ALTO CHEMICAL USE HISTORY - 1992

Toluene Bulk	123,311.600 LB
Caustic Soda 50% Bulk	325,379.000 LB
Sulfuric Acid 93% 750 LB/DR	153,750.000 LB
Hydrochloric Acid 32% 500LB/D	257,500.000 LB
Nitrogen	8,362,265.000 CF
Ethylene Glycol 515 LB/DR	5,685.000 LB
Methanol Bulk	257,604.800 LB
Alumina Activated 100 LB/BG	1,500.000 LB
Ammonia Anhydrous	7,650.000 LB
N-Amyl Bromide	3,612.000 LB
Atlox 3404 F 450#	900.000 LB
Benzenethiol (450 LB/DR) FS	1,788.400 LB
DCBTF	122,200.000 LB
L 61 Defoamer	450.000 LB
S Di-methyl Octanal	14,440.000 LB
Dimethyl Formamide 420 LB/DR	9,470.000 LB
Dry Ice Block	33,200.000 LB
Ethanol Denatured 200 Proof	77,787.600 LB
Ethyl Bromide	3,900.000 LB
Ethylenediamine (413 LB/DR)	413.000 LB
Formalin 37%	485.000 LB
Gelvatol 40/10	250.000 LB
Hexane, 5 Degree Bulk	152,166.000 LB
Hexaneamine	66.150 LB
Hydroxy Acetic Acid 550	1,100.000 LB

EAST PALO ALTO CHEMICAL USE HISTORY - 1992

IGEPAL	460.000 LB
Kelzan-S	150.000 LB
Magnesium 150 LB/DR	450.000 LB
Methane Sulfonyl Chloride	1,200.000 LB
Methoxy Citronellal	21,992.000 LB
S-Methoxy Citronellal	22,800.000 LB
N-Methylpyrrolidone	203,320.000 LB
Methyl Isodehydroacetate (MIDA)	65,784.000 LB
Oleyl Alcohol 385 LB/DR	1,925.000 LB
Potassium Fluoride 110 LB/DR	54,347.000 LB
Potassium Carbonate 50 LB/BG	150,787.000 LB
Petro-4250ISP(50 LB/BG)	200.000 LB
Picoline, Mixed	1,675.800 LB
Sodium Bicarbosp	1,500.000 LB
Sodium Bromide	990.000 LB
Sodium Methylate 25%	91,440.000 LB
Tenneco 500-100	2,772.000 LB
Tetrahydrofuran/(THF)	6,400.000 LB
Tetraisopropyl-Titanate	59,881.000 LB
Triethylamine	1,320.000 LB
D-Valine	143,260.000 LB
VAZO 64	1,400.000 LB
Propargyl-Alcohol	7,026.000 LB
Thionyl Chloride	5,800.000 LB
Airvol 205	10,000.000 LB
Hexane 55 GAL/DR	21,477.000 LB

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EXHIBIT E

**EXCEPTIONS FROM SUBSTANTIAL COMPLIANCE
WITH ENVIRONMENTAL LAWS**

1. On December 28, 1988, the State of California ex rel Kenneth w. Kizer, Director, California Department of Health Services filed a complaint against Sandoz Crop Protection Corporation in San Mateo Superior Court (Civ. Case No. 901001) alleging violations of the Health and Safety Code by Sandoz Crop Protection Corporation and its predecessor Zoecon Corporation. A copy of the complaint filed by the State is attached as Exhibit E.1. The State filed a First Amended Complaint against Sandoz Crop Protection Corporation on January 16, 1990. Although Sandoz Agro, Inc. disputes the allegations conveyed in these pleadings, it agreed to a settlement of the action on February 14, 1991. A copy of the Consent Judgment and First Amended Complaint are attached as Exhibit E.2.

2. On March 5, 1992, the Department of Toxic Substances Control issued an Enforcement Order (FO 91/92 2-003) alleging violations of the Health and Safety Code by Sandoz Crop Protection Corporation. Although Sandoz Agro, Inc. disputes the allegations contained in this pleading, it agreed to a settlement of the Enforcement Order on April 8, 1992. A copy of the Enforcement Order is attached as Exhibit E.3.

EXHIBIT E-1

ENDORSED
FILED

San Francisco County Superior Court

DEC 28 1988

DONALD W. DICKINSON, Clerk

BY: THERESA TORPEY

Deputy Clerk

1 JOHN K. VAN DE KAMP, Attorney General
of the State of California
2 ANDREA SHERIDAN ORDIN
Chief Assistant Attorney General
3 THEODORA BERGER
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6 San Francisco, California 94102
Telephone: (415) 557-1243

7 Attorneys for Plaintiffs

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 901001

No.

12 PEOPLE OF THE STATE OF CALIFORNIA,
ex rel Kenneth W. Kizer, Director,
13 State Department of Health Services,

14 Plaintiffs,

15 v.

16 SANDOZ CROP PROTECTION CORPORATION,
a New York Corporation, and
17 Does 1 through 20

18 Defendants.

COMPLAINT FOR
CIVIL PENALTIES,
INJUNCTIVE RELIEF,
AND RECOVERY
OF COSTS OF
INVESTIGATION
UNDER THE
HAZARDOUS WASTE
CONTROL ACT

19
20 The People of the State of California ex rel. Kenneth
21 W. Kizer, Director of the California Department of Health
22 Services, allege as follows:

23 PLAINTIFFS

24 1. Kenneth W. Kizer is the Director of the State of
25 California Department of Health Services ("DHS"). DHS is a
26 public agency of the State of California, organized and existing
27 under and pursuant to sections 100 et seq. of the California

1 Health and Safety Code. DHS is the state agency responsible for
2 the administration of the Hazardous Waste Control Act, Chapter
3 6.5 of division 20 of the California Health and Safety Code,
4 sections 25100 et seq. ("HWCA").

2. Pursuant to section 25182 of the California Health and Safety Code, the Attorney General of the State of California is authorized to commence an action for civil penalties under the HWCA in the name of the People of the State of California, at the request of DHS.

DEPENDANTS

11 3. DHS is informed and believes and thereon alleges
12 that Sandoz Crop Protection Corporation ("Sandoz") is and, at all
13 times relevant hereto, was a New York corporation organized
14 under the laws of New York and doing business in California.

15 4. Sandoz is and, at all times relevant hereto, was a
16 "person" as that term is defined in Section 25118 of the Health &
17 Safety Code.

18 5. Sandoz at all times relevant hereto operated a
19 hazardous waste facility at 1990 Bay Road, East Palo Alto,
20 California 94303 (the "Bay Road Facility.")

21 6. Defendants Does 1 through 20 are the officers,
22 agents, employees, servants, or others acting in concert with
23 defendant Sandoz. When the true names of these persons have
24 been ascertained, plaintiff will amend the complaint to name them
25 as parties defendant.

26 7. This court has jurisdiction of this action pursuant
27 to Cal. Const. Art. 6, section 10.

1 8. Venue is proper under Health and Safety Code
2 Section 25183.

3 STATUTORY AND REGULATORY BACKGROUND

4 9. Health and Safety Code section 25201, a part of
5 the Hazardous Waste Control Act, provides in pertinent part that:
6 "No operator of a storage facility, treatment
7 facility...or waste disposal site shall accept, treat,
8 store, or dispose of a hazardous waste at the
9 facility, station, area, or site, unless the operator
10 holds a hazardous waste facilities permit from the
11 [Department to use and operate the facility, station,
12 area, or site."

13 10. Regulations promulgated by DHS in Title 22,
14 California Code of Regulations ("CCR"), Chapter 30, implement
15 these requirements by establishing the requirements for applying
16 for a Hazardous Waste Facilities Permit. Title 22, CCR sections
17 66370-66408.

18 11. Health and Safety Code section 25200.5, enacted
19 in 1980, provides that a person who desires to continue use or
20 operation of an existing hazardous waste facility pending DHS
21 review and determination of the person's permit application may
22 be granted "interim status". Pursuant to section 25200.5, a
23 facility operating under interim status is subject to the
24 provisions of the HWCA and the rules, regulations, standards and
25 requirements issued or promulgated thereunder. Moreover, interim
26 status may be granted subject to any conditions which the

27 ///

1 DHS deems necessary to protect the public or the environment.
2 12. Health and Safety Code section 25200 authorizes
3 DHS to issue hazardous waste facilities permits. DHS may impose
4 conditions on a hazardous waste facilities permit, specifying,
5 without limitation, the types of hazardous wastes which may be
6 accepted for treatment or disposal; special operating conditions;
7 requirements for evidence of financial responsibility for
8 liabilities which may be incurred in the operation of the
9 facility; bond or other surety requirements to cover the costs of
10 monitoring, maintaining, and closing the facility, and of post-
11 closure security; and changes in the operation of the permitted
12 facility necessary to comply with the regulations promulgated
13 pursuant to Health and Safety Code section 25202. DHS may place
14 other conditions on such a permit consistent with the HWCA.
15 Section 25202 provides that compliance with the conditions set
16 forth in a hazardous waste facilities permit and with DHS
17 regulations is necessary to sustain the validity of such a
18 permit. Title 22, CCR section 66374(a), moreover, provides that
19 any noncompliance with the conditions set forth in a hazardous
20 waste facilities permit "is grounds for enforcement action; for
21 permit termination, revocation and reissuance, or modification;
22 or for denial of a permit renewal application."

23 13. Section 25189(b) of the Health and Safety Code
24 imposes liability for a civil penalty upon any person who
25 intentionally or negligently violates any provision of the HWCA
26 or any permit, rule, regulation, standard, or requirement issued
27 //

1 or promulgated pursuant to the HWCA. Such a civil penalty may
2 not exceed \$25,000 for each violation of a separate provision
3 or, for continuing violations, \$25,000 for each day that a
4 violation continues.

5 14. Section 25189.2(b) of the Health and Safety Code
6 imposes liability for a civil penalty upon any person who non-
7 intentionally or non-negligently violates any provision of the
8 HWCA or any permit, rule, regulation, standard, or requirement
9 issued or promulgated pursuant to the HWCA. Such a civil penalty
10 may not exceed \$10,000 for each violation of a separate
11 provision or, for continuing violations, \$10,000 for each day
12 that a violation continues.

13 15. Section 25181 of the Health and Safety Code
14 provides that when DHS determines that any person has engaged
15 in, is engaged in, or is about to engage in any act or practice
16 which constitutes or will constitute a violation of any provision
17 of the HWCA, or any rule, regulation, permit, covenant,
18 standard, requirement, or order issued, promulgated, or executed
19 thereunder, and when requested by DHS, the Attorney General may
20 apply for an order enjoining that act or practice, or for an
21 order directing compliance with the provision, rule, regulation,
22 permit, covenant, standard, requirement or order violated or
23 threatened with violation. Upon a showing by DHS that such
24 person has engaged in or is about to engage in any such act or
25 practice, the Superior Court may grant a permanent or temporary
26 injunction, restraining order, or any other appropriate order.
27 ///

1 16. Section 25184 of the Health and Safety Code
2 provides that in any civil action brought pursuant to the HWCA in
3 which a temporary restraining order, preliminary injunction, or
4 permanent injunction is sought, DHS need not allege or prove at
5 any stage of the proceeding that irreparable damage would occur
6 should the temporary restraining order, preliminary injunction,
7 or permanent injunction not issue, or that the remedy at law is
8 inadequate, and the temporary restraining order, preliminary
9 injunction, or permanent injunction shall issue without such
10 allegations and without such proof.

11 STATEMENT OF THE CASE

12 17. DHS, in the name of the People of the State of
13 California, seeks civil penalties and injunctive relief pursuant
14 to sections 25189, 25189.2, 25181 and 25184 of the California
15 Health and Safety Code for repeated and continuing violations by
16 Sandoz of the HWCA, which governs hazardous waste storage,
17 transportation, treatment, and disposal.

18 GENERAL ALLEGATIONS

19 18. Sandoz operates a hazardous waste facility at 1990
20 Bay Road, East Palo Alto, CA 94303 ("the Bay Road Facility").
21 Sandoz generates hazardous wastes at the Bay Road Facility,
22 manufactures biorational insect control agents and operates as a
23 storage and transfer station facility.

24 19. On April 6, 1981, DHS issued Interim Status
25 Document No. CAT000611350 (the "ISD") to Zoecon Corporation
26 Chemicals Division ("Zoecon") for the Bay Road Facility. The ISD
27 allowed Zoecon and, upon the acquisition of Zoecon by Sandoz,

1 allowed Sandoz to operate that facility, subject to all
2 applicable laws and regulations, pending the issuance of a
3 hazardous waste facilities permit. The ISD set forth the legally
4 enforceable guidelines to be followed by Zoecon and, subsequently
5 Sandoz, for handling, storing, disposing and treating hazardous
6 materials and set forth training and safety requirements for the
7 Bay Road Facility.

8 20. On information and belief, Sandoz acquired Zoecon
9 on or about March 25, 1983. Sandoz continued to operate the Bay
10 Road Facility under the name Zoecon, submitting an Operating Plan
11 for the facility to DHS on or about March 2, 1984, in the name of
12 Zoecon Corporation. By acquiring Zoecon, and continuing to
13 operate the Bay Road Facility under the name Zoecon, Sandoz
14 assumed all of Zoecon's obligations under the ISD and under the
15 California Health and Safety Code, and the regulations adopted
16 pursuant thereto, in connection with the operation of that
17 facility.

18 21. On February 19, 1985, DHS issued to Zoecon
19 Hazardous Waste Facility Permit No. CAT000611350 ("HWFP") for
20 storage and/or treatment of hazardous waste at the Bay Road
21 Facility. The HWFP replaced the ISD issued to Zoecon. The HWFP
22 was issued in the name of Zoecon because the Bay Road Facility
23 continued to operate under that name. (Sandoz submitted an
24 Operating Plan to DHS in 1984 under that name and did not notify
25 DHS of its desire to operate under the name Sandoz until on or
26 about November 24, 1986). The HWFP set forth the legally
27 enforceable guidelines to be followed by Sandoz, which ~~owed~~

1 Zoecon and was operating under that name, for handling, storing,
2 disposing and treating hazardous materials, and set forth
3 training and safety requirements, for the Bay Road Facility.

4 22. On January 16, 1986, July 13, 1987 and January
5 29, 1988, DHS observed or learned of violations of applicable
6 statutes and regulations, and the ISD and HWFP, at Sandoz's Bay
7 Road Facility.

8 FIRST CAUSE OF ACTION

9 (Negligent or Intentional Violations)

10 23. Paragraphs 1 through 22 are realleged as if fully
11 set forth herein.

12 24. In operating the Bay Road Facility, Sandoz has
13 committed the following violations of applicable statutes,
14 regulations, the ISD, and the HWFP, as set forth in paragraphs 25
15 through 39.

16 25. Sandoz failed to notify DHS of physical
17 alterations made to the permitted portion of the Bay Road
18 Facility, including but not limited to the addition of a second
19 pump to the pump system serving the aqueous waste tanks. These
20 alterations were made at some time prior to January 16, 1986;
21 Sandoz did not notify DHS of the alterations until November 25,
22 1986. By making these physical alterations and failing to notify
23 DHS thereof, Sandoz violated Title 22, CCR section 66374(1), and
24 HWFP section II(6)(1).

25 26. Commencing in or about 1981 and continuing to the
26 present, Sandoz stored hazardous wastes, including but not
27 limited to 2, 4, 5-T (2, 4, 5 trichlorophenoxyacetic acid),

1 organophosphate pesticides, pentac (bis (pentachloro 2, 4
2 cyclopentadien-1-yl)), waste cycloprate (hexadecyl
3 cyclopropanecarboxylate) and waste NMP (n-methyl pyrrolidone),
4 for longer than one year in violation of California Health and
5 Safety Code section 25201, ISD section II(1)(a)-(b), and HWFP
6 section IV(1)(a).

7 27. Commencing on or about December 20, 1983, and
8 continuing to the present, Sandoz inadequately labelled drums
9 containing hazardous wastes. More specifically, on January 16,
10 1986, and again on July 13, 1987, drums with labels marked "2, 4,
11 5-T" did not include (a) the composition and physical state of
12 the waste and (b) a statement or statements calling attention to
13 the particular hazardous properties of the waste. The foregoing
14 constituted violations of Title 22, CCR section 66508(c)(1)-(2).

15 28. Commencing on or about December 20, 1983, and
16 continuing to the present, Sandoz failed to conduct detailed
17 physical and chemical analyses of the contents of several
18 hazardous waste containers at the Bay Road Facility. More
19 specifically, Sandoz had no detailed chemical and physical
20 analyses of the contents of the drums labelled "2, 4, 5-T," nor
21 of the drums containing NMP ("Still Bottoms - NMP distillation")
22 waste. The foregoing constituted violations of Title 22, CCR
23 section 67102 (a)(1)&(3), ISD section III(3)(a), and HWFP
24 section III(6)(b).

25 29. Sandoz failed to maintain and operate the Bay
26 Road Facility in a such a manner so as to minimize the
27 possibility of an unplanned sudden or non-sudden release of

1 hazardous waste or hazardous waste constituents, as evidenced by
2 a large caustic leak which occurred at the caustic pump station
3 on January 5, 1988, and the leakage of a drum of NMP/EP, which
4 leaked for several hours on January 19, 1988, causing a spill in
5 the drum lot. Each of the foregoing constituted a violation of
6 Title 22, CCR section 67120(a).

7 30. On at least two occasions, Sandoz failed to
8 notify the State Office of Emergency Services of an emergency
9 situation at the Bay Road Facility, thereby violating Title 22,
10 CCR section 67145(d)(2). More specifically, Sandoz failed to
11 notify the Office of Emergency Services of the caustic leak
12 which occurred on January 5, 1988, at the caustic pump station,
13 and of the drum of NMP/EP which leaked in the drum lot for
14 several hours on January 19, 1988.

15 31. On at least two occasions, Sandoz failed to
16 submit to DHS a written report describing an emergency at the
17 Bay Road Facility within 15 days of the incident, thereby
18 violating Title 22, CCR sections 67145(j) and 67167(a), and HWFP
19 sections II(6)(k)(2) and III(17)(d)(1). More specifically,
20 Sandoz failed to report to DHS the caustic leak of January 5,
21 1988, and the spill of NMP/EP of January 19, 1988.

22 32. Commencing at some time prior to March 23, 1988
23 and continuing until the present, Sandoz failed to establish and
24 demonstrate to DHS financial assurance for closure of the Bay Road
25 Facility, in violation of Title 22, CCR section 67003 and HWFP
26 section III (19)(b). Specifically, Sandoz's estimate of the cost
27 of closing the Bay Road Facility exceeds by more than \$160,000

1 the amount of financial assurance Sandoz has established and
2 demonstrated to DHS.

3 33. Commencing at some time prior to January 16, 1986,
4 and continuing until the present, Sandoz failed to revise its
5 closure plan to reflect changes in the operations and facility
6 design of the Bay Road Facility. For example, Sandoz's closure
7 plan for the Bay Road Facility was and continues to be deficient
8 in that it fails to include a description for closure of the dual
9 pump system serving the aqueous waste tanks. The foregoing
10 constitutes a violation of Title 22, CCR section 67212(c) and
11 HWFP section III(18)(a)(2).

12 34. Sandoz's closure plan is deficient in that it
13 does not contain a description of the steps needed to
14 decontaminate facility equipment during closure:

- 15 a. A list of equipment, containers
16 and structures requiring
17 decontamination.
- 18 b. Sampling and analytical methods
19 for determining whether
20 contaminated soils are hazardous
21 wastes.
- 22 c. Testing criteria for determining
23 adequacy of cleanup.
- 24 d. Methods of treatment or disposal of
25 contaminated soils and residues.

26 Each of the foregoing is in violation of Title 22, section
27 67212(b)(3).

1 35. Sandoz's Closure Plan does not include a schedule
2 for final closure activities, in violation of Title 22, CCR
3 section 67212(b)(4).

4 36. On information and belief, on or about February 2,
5 1988, Sandoz sent an extremely hazardous waste, 2, 4, 5-T, for
6 disposal at an off-site disposal facility, although Sandoz did
7 and does not have an Extremely Hazardous Waste Disposal Permit,
8 in violation of Title 22, CCR section 66570.

9 37. Commencing on or about December 20, 1983 and
10 continuing until on or about February 19, 1985, Sandoz stored
11 hazardous wastes, including without limitation 2, 4, 5-T,
12 organophosphate pesticides and pentac, which were not listed in
13 its Part A application for an Interim Status Document, in
14 violation of ISD section I(4)(a).

15 38. Commencing on or about February 20, 1985 and
16 continuing until the present, Sandoz stored hazardous wastes,
17 including without limitation 2, 4, 5-T, organophosphate
18 pesticides and pentac, which were not listed in its Operating
19 Plan, incorporated by reference in the HWFP, in violation of HWFP
20 section III(2)(b).

21 39. On or about January 16, 1986, Sandoz violated
22 Title 22, CCR section 67105(d)(4) and HWFP section III(9)(c)(4)
23 in that the training record at the Bay Road Facility did not
24 indicate that all elements of the Bay Road Facility's written
25 training plan had been completed.

26 40. For each of the violations set forth in
27 paragraphs 25 through 33 and 36 through 39, Sandoz is subject to

1 civil penalties pursuant to Health and Safety Code section
2 25189(b).

3 41. Sandoz is liable for civil penalties according to
4 proof, pursuant to Health and Safety Code Section 25189(b), for
5 each and every separate violation set forth in paragraphs 25
6 through 33 and 36 through 39, inclusive.

7 SECOND CAUSE OF ACTION

8 (Non-Intentional and Non-negligent Violations)

9 42. Paragraphs 1 through 39, inclusive, are realleged
10 as if fully set forth herein.

11 43. For each of the violations set forth in paragraphs
12 25 through 33 and 36 through 39, Sandoz is subject to civil
13 penalties pursuant to Health and Safety Code section 25189.2(b).

14 44. Sandoz is liable for civil penalties according to
15 proof, pursuant to Health and Safety Code section 25189.2(b), for
16 each and every separate violation set forth in paragraphs 25
17 through 33 and 36 through 39, inclusive.

18 THIRD CAUSE OF ACTION

19 (Injunctive Relief)

20 45. Paragraphs 1 through 39, inclusive, are realleged
21 as if fully set forth herein.

22 46. Sandoz has engaged in acts or practices which
23 constitute violations of the HWCA, of the regulations issued or
24 promulgated thereunder, the ISD issued thereunder, and the HWFP
25 issued thereunder, as more fully stated in paragraphs 25 through
26 39, inclusive, set forth above.

27 ///

1 47. Plaintiffs are entitled to a preliminary and
2 permanent injunction enjoining Sandoz from further violations of
3 the Act, and of the rules, regulations, permits, covenants,
4 standards, requirements, and orders issued, promulgated and
5 executed thereunder.

6 **FOURTH CAUSE OF ACTION**

7 **(Investigative Costs)**

8 48. Paragraphs 1 through 47, inclusive, are realleged
9 as if fully set forth herein.

10 49. DHS incurred investigation costs to determine
11 whether Sandoz has been in compliance with the State's hazardous
12 waste control laws. DHS has expended and will continue to expend
13 State funds for such costs of investigation in order to determine
14 whether defendants are in compliance with the State's hazardous
15 waste control laws and whether defendants are complying with any
16 injunction issued by the Court. Sandoz is liable to plaintiffs
17 for such costs of investigation.

18 **PRAYER**

19 WHEREFORE, plaintiffs pray that the Court:

20 1. Grant civil penalties according to proof against
21 Sandoz pursuant to the First and Second Causes of Action; and

22 2. Grant plaintiffs preliminary and permanent
23 injunctions enjoining Sandoz from further violations of the HWCA,
24 or of the rules, regulations, permits, covenants, standards,
25 requirements, and orders issued, promulgated and executed
26 thereunder; and

27 ///

- 1 3. Grant plaintiffs their costs of investigation; and
2 4. Grant plaintiffs their costs of suit herein; and
3 5. Grant such other and further relief as the Court
4 deems just and proper.

5
6 DATED: December 28, 1988

7 JOHN K. VAN DE KAMP
8 Attorney General
9 ANDREA SHERIDAN ORDIN
10 Chief Assistant Attorney General
11 THEODORA BERGER
12 Assistant Attorney General
13 KEVIN JAMES
14 Deputy Attorney General

15
16
17
18 By: Kevin James
19 KEVIN JAMES
20 Deputy Attorney General
21 Attorneys for Plaintiffs
22
23
24
25
26
27

EXHIBIT E-2

3138-5
COPY

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12 Attorneys for Defendant

13 SANDOZ CROP PROTECTION CORPORATION

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE CITY AND COUNTY OF SAN FRANCISCO
16

17 PEOPLE OF THE STATE OF CALIFORNIA,)
ex rel. Kenneth W. Kizer, Director,)
State Department of Health)
18 Services,)

19 Plaintiffs,)

20 vs.)

21 SANDOZ CROP PROTECTION CORPORATION,)
a New York Corporation, and Does 1)
22 through 20,)

23 Defendants.)

24
25 ///

26 ///

27 ///

CONSENT JUDGMENT

ENDORSED
FILED
San Francisco County Superior Court

FEB 14 1991

DONALD W. DICKINSON, Clerk
BY: CRISTINA E. BAUTISTA
Deputy Clerk

NO. 901001

CONSENT JUDGMENT

1 1. Introduction.

2 On December 28, 1988, the People of the State of
3 California, ex rel. Kenneth W. Kizer, Director of the State
4 Department of Health Services (hereinafter collectively referred
5 to as "Plaintiffs"), filed a complaint (the "Complaint") in the
6 Superior Court for the City and County of San Francisco, No.
7 901001, against Sandoz Crop Protection Corporation ("Sandoz").
8 Plaintiffs filed the Complaint against Sandoz as the operator of
9 an insect control device manufacturing plant at 1990 Bay Road,
10 East Palo Alto, California (the "Facility"). On January 18,
11 1990, Plaintiffs filed a First Amended Complaint ("Amended
12 Complaint") against Sandoz. Plaintiffs and Sandoz now enter into
13 this Consent Judgment ("Judgment") in order to settle Plaintiffs'
14 claims under the Amended Complaint on the terms set forth herein.

15 2. The Amended Complaint.

16 The Amended Complaint (attached hereto as Exhibit A and
17 incorporated herein by this reference) alleges that Sandoz
18 violated provisions of the California Hazardous Waste Control Act
19 ("HWCA"), California Health and Safety Code sections 25100 et
20 seq.; the regulations adopted by the State of California
21 Department of Health Services ("DHS") pursuant to the HWCA, 22
22 California Code of Regulations sections 66001 et seq.
23 ("Regulations"); the Interim Status Document ("ISD") issued by
24 DHS to Sandoz on April 6, 1981; and the Hazardous Waste
25 Facilities Permit ("Permit") issued by DHS to Sandoz on March 25,
26 1983.

27 ///

1 **CONSENT JUDGMENT**

1 3. Jurisdiction.

2 Plaintiffs and Sandoz agree that the Superior Court for
3 the City and County of San Francisco has subject matter
4 jurisdiction over the matters alleged in the Amended Complaint
5 and personal jurisdiction over the parties to this Judgment.

6 4. Settlement of Disputed Claims.

7 a. Plaintiffs and Sandoz enter into this Judgment pursuant
8 to a compromise and settlement of disputed claims set forth in
9 the Amended Complaint for the purpose of avoiding prolonged and
10 complex litigation, and in furtherance of the public interest.

11 b. Sandoz admits the violations alleged in the Amended
12 Complaint for the purposes of any subsequent action brought
13 pursuant to the HWCA within five years of the date of those
14 alleged violations. Nothing in this Judgment is intended or
15 shall be construed as an admission by Sandoz of any other alleged
16 violation, or of any alleged violation for any purpose other than
17 as described in this paragraph.

18 5. Basic Settlement.

19 a. Plaintiffs and Sandoz agree to settle this case as
20 follows:

21 (1) Within thirty (30) days of notice of entry of this
22 Judgment, Sandoz shall pay civil penalties to DHS in the amount
23 of Two Hundred Thousand Dollars (\$200,000). The payment shall be
24 made by certified or cashier's check, to the California
25 Department of Health Services. The check shall be mailed to
26 Cashier, T.S.C.P. Accounting, Department of Health Services,
27 Toxic Substances Control Program, P. O. Box 94732, Sacramento, CA

CONSENT JUDGMENT

1 94234-7320; and shall bear on its face the docket number of this
2 proceeding. A photocopy of the check shall be sent, at the same
3 time, to Kevin James, Esq., Office of the Attorney General, 2101
4 Webster Street, 12th Floor, Oakland, CA 94612-3049.

5 (2) The Department shall review the closure plan that
6 Sandoz submitted with its permit renewal application ("Renewal
7 Closure Plan") for completeness. If DHS determines that the
8 Renewal Closure Plan is incomplete, it will issue a notice of
9 deficiency to Sandoz. Sandoz will provide all information and/or
10 documentation requested in the notice of deficiency within 30
11 days of receipt of the notice.

12 (3) Sandoz agrees that if it decides to close the
13 Facility before the Department has finally approved or denied its
14 permit renewal application, the Department will conduct a
15 technical evaluation of the Renewal Closure Plan. The Department
16 will notify Sandoz of any technical deficiencies in the Renewal
17 Closure Plan and Sandoz will correct such deficiencies prior to
18 initiating closure activities. Sandoz agrees that if it decides
19 to close the Facility prior to approval or denial of its permit
20 renewal application, it will close the Facility under the Renewal
21 Closure Plan, and any modifications made in response to the
22 Department's technical evaluation of the Renewal Closure Plan.

23 b. Each party to this Judgment shall bear the attorneys'
24 fees and costs of litigation he, she or it incurred in connection
25 with this case.

26 ///

27 ///

CONSENT JUDGMENT

1 6. Compliance with Applicable Law.

2 Sandoz agrees that it will comply with all applicable
3 provisions of state law and, pursuant to California Health and
4 Safety Code sections 25159.5 and 25159.6, all applicable federal
5 regulations, governing the management of hazardous waste,
6 including the HWCA, the regulations and the Permit, in its
7 operations at the Facility.

8 7. Entry of Judgment.

9 Plaintiffs and Defendant request the Superior Court for
10 the City and County of San Francisco to enter the Judgment which
11 comprises this document and which includes the exhibit to this
12 document. Upon entry of this Judgment, Sandoz waives its rights
13 to a hearing or trial on the allegations of the Amended
14 Complaint.

15 8. Matters Covered by This Judgment.

16 a. Subject to the provisions of section 9, below, this
17 Judgment is a full and final judgment as to all violations of the
18 HWCA, the Regulations, the Permit and the ISD alleged by
19 Plaintiffs in the Amended Complaint.

20 b. The provisions of paragraph 8(a) are expressly
21 conditioned on full and complete performance by Sandoz of the
22 terms and conditions of this Judgment.

23 9. Matters Not Covered by This Judgment.

24 a. This Judgment does not settle, conclude or otherwise
25 affect any claim made by DHS, or which may be made by DHS,
26 against Sandoz other than those set forth in the Amended
27 Complaint.

CONSENT JUDGMENT

1 b. This Judgment does not settle, conclude or otherwise
2 affect any claim made, or which may be made, against Sandoz
3 by any federal agency, any agency of the State of California
4 other than DHS, or any local agency.

5 10. Additional Enforcement Activities.

6 Except as expressly provided in this Judgment, nothing
7 in this Judgment is intended or shall be construed to limit or
8 preclude DHS, or any other government agency, from taking any
9 further enforcement action against Sandoz or against any person,
10 entity or government agency. Except as expressly provided in
11 this Judgment, nothing in this Judgment is intended or shall be
12 construed to limit or preclude DHS, or any other government
13 agency, from exercising its authority under any law, statute or
14 regulation.

15 11. Reservation of Rights.

16 Nothing in this Judgment is intended or shall be
17 construed to limit or preclude DHS, or any other government
18 agency, from taking any action authorized by law to protect the
19 public health and welfare or environmental quality, and to
20 recover the costs of such action.

21 12. Enforcement of Judgment.

22 Plaintiffs and Sandoz agree that the Superior Court for
23 the City and County of San Francisco shall retain jurisdiction of
24 this Judgment and shall have jurisdiction to implement and
25 enforce its terms and conditions. Plaintiffs may, by motion or
26 order to show cause before the Superior Court for the City and
27 County of San Francisco, seek to enforce the terms and conditions

CONSENT JUDGMENT

1 of this Judgment. In any action brought by Plaintiffs to enforce
2 this Judgment, Plaintiffs may seek whatever fines, costs,
3 penalties or remedies are provided by law.

4 13. Modification of Judgment.

5 This Judgment may only be modified upon written
6 approval of the parties hereto and the Superior Court for the
7 City and County of San Francisco.

8 14. Application of Judgment.

9 This Judgment shall apply to and be binding upon
10 Plaintiffs and Sandoz, their directors, officers, employees and
11 agents, and the successors or assigns of each of them.

12 15. Authority to Enter Judgment.

13 Each signatory to this Judgment certifies that he or
14 she is fully authorized by the party he or she represents to
15 enter into this Judgment, to execute it on behalf of the party
16 represented and legally to bind that party.

17 16. No Waiver of Right to Enforce.

18 Plaintiffs' failure to seek enforcement of any
19 provision of this Judgment shall in no way be deemed a waiver of
20 such provision, or in any way affect the validity of this
21 Judgment. Plaintiffs' failure to seek to enforce any such
22 provision shall not preclude Plaintiffs from later seeking to
23 enforce the same or any other provision of this Judgment.

24 17. Integration.

25 This Judgment constitutes the entire agreement among

26 ///

27 ///

CONSENT JUDGMENT

1 the parties and may not be amended or supplemented except as
2 provided for in this Judgment.

3 IT IS SO STIPULATED:


4 JOHN K. VAN DE KAMP, Attorney General
5 of the State of California
6 ANDREA SHERIDAN ORDIN, Chief
7 Assistant Attorney General
8 THEODORA BERGER
9 Assistant Attorney General
10 SANDRA GOLDBERG
11 Deputy Attorney General

12 Dated: 12-12-90 By:

13 
14 KEVIN JAMES, Deputy Attorney General
15 Attorneys for Plaintiffs


16 STATE OF CALIFORNIA DEPARTMENT OF
17 HEALTH SERVICES

18 Dated: 2/4/91 By:

19 
20 KENNETH W. KIZER, M.D., M.P.H.
21 Director, State of California
22 Department of Health Services


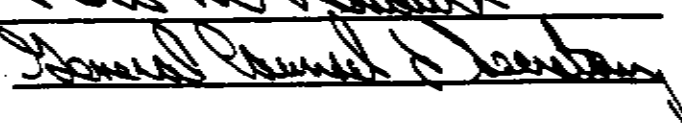
23 LANDELS, RIPLEY & DIAMOND

24 Dated: 12/20/90 By:

25 
26 ANTHONY O. GARVIN
27 Attorneys for Defendant
Sandoz Crop Protection Corporation

28 SANDOZ CROP PROTECTION CORPORATION

29 Dated: 1/2/91 By:

30 
31 Its 

32 IT IS SO ORDERED, ADJUDGED AND DECREED:

33 Dated: FEB 13 1991

34 STUART R. POLLAK

35 THE HONORABLE STUART R. POLLAK
36 JUDGE OF THE SUPERIOR COURT

37 CONSENT JUDGMENT

EXHIBIT A

JAN 18 1990

DONALD W. DICKINSON, Clerk

BY: RIC C. ZARAGOSA
Deputy Clerk

1 JOHN K. VAN DE KAMP, Attorney General
of the State of California
2 ANDREA SHERIDAN ORDIN
Chief Assistant Attorney General
3 THEODORA BERGER
Assistant Attorney General
4 KEVIN JAMES
Deputy Attorney General
5 350 McAllister, Room 6000
San Francisco, California 94102
6 Telephone: (415) 557-1243

7 Attorneys for Plaintiffs

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 PEOPLE OF THE STATE OF CALIFORNIA,
12 ex rel. Kenneth W. Kizer, Director,
13 State Department of Health Services,
14 Plaintiffs,
15 v.
16 SANDOZ CROP PROTECTION CORPORATION,
a New York Corporation, and
17 Does 1 through 20
18 Defendants.

No. 901001

FIRST AMENDED
COMPLAINT FOR
CIVIL PENALTIES,
INJUNCTIVE RELIEF,
AND RECOVERY
OF COSTS OF
INVESTIGATION
UNDER THE
HAZARDOUS WASTE
CONTROL ACT

21 The People of the State of California ex rel. Kenneth
22 W. Kizer, Director of the California Department of Health
23 Services, allege as follows:

24 PLAINTIFFS

25 1. Kenneth W. Kizer is the Director of the State of
26 California Department of Health Services ("DHS"). DHS is a
27 public agency of the State of California, organized and existing

1 under and pursuant to sections 100 et seq. of the California
2 Health and Safety Code. DHS is the state agency responsible for
3 the administration of the Hazardous Waste Control Act, Chapter
4 6.5 of division 20 of the California Health and Safety Code,
5 sections 25100 et seq. ("HWCA").

6 2. Pursuant to section 25182 of the California Health
7 and Safety Code, the Attorney General of the State of California
8 is authorized to commence an action for civil penalties under the
9 HWCA in the name of the People of the State of California, at the
10 request of DHS.

11 DEFENDANTS

12 3. DHS is informed and believes and thereon alleges
13 that Sandoz Crop Protection Corporation ("Sandoz") is and, at all
14 times relevant hereto, was a New York corporation organized under
15 the laws of New York and doing business in California.

16 4. Sandoz is and, at all times relevant hereto, was a
17 "person" as that term is defined in Section 25118 of the Health &
18 Safety Code.

19 5. Sandoz at all times relevant hereto operated a
20 hazardous waste facility at 1990 Bay Road, East Palo Alto,
21 California 94303 (the "Bay Road Facility.")

22 6. Defendants Does 1 through 20 are the officers,
23 agents, employees, servants, or others acting in concert with
24 defendant Sandoz. When the true names of these persons have been
25 ascertained, plaintiff will amend the complaint to name them as
26 parties defendant.

27 //

1 7. This court has jurisdiction of this action pursuant
2 to Cal. Const. Art. 6, section 10.

3 8. Venue is proper under Health and Safety Code
4 Section 25183.

5 STATUTORY AND REGULATORY BACKGROUND

6 9. Health and Safety Code section 25201, a part of the
7 Hazardous Waste Control Act, provides in pertinent part that:

8 "No operator of a storage facility, treatment
9 facility...or waste disposal site shall accept, treat,
10 store, or dispose of a hazardous waste at the facility,
11 station, area, or site, unless the operator holds a
12 hazardous waste facilities permit from the [D]epartment
13 to use and operate the facility, station, area, or
14 site."

15 10. Regulations promulgated by DHS in Title 22,
16 California Code of Regulations ("CCR"), Chapter 30, implement
17 these requirements by establishing the requirements for applying
18 for a hazardous waste facilities permit. Title 22, CCR sections
19 66370-66408.

20 11. Health and Safety Code section 25200.5, enacted in
21 1980, provides that a person who desires to continue to use or
22 operate an existing hazardous waste facility pending DHS review
23 and determination of the person's permit application may be
24 granted "interim status". Pursuant to section 25200.5, a facility
25 operating under interim status is subject to the provisions of
26 the HWCA and the rules, regulations, standards and requirements
27 issued or promulgated thereunder. Moreover, interim status may

1 be granted subject to any conditions which DHS deems necessary to
2 protect the public or the environment.

3 12. Health and Safety Code section 25200 authorizes
4 DHS to issue hazardous waste facilities permits. DHS may impose
5 conditions on a hazardous waste facilities permit, specifying,
6 without limitation, the types of hazardous wastes which may be
7 accepted for treatment or disposal; special operating conditions;
8 requirements for evidence of financial responsibility for
9 liabilities which may be incurred in the operation of the
10 facility; bond or other surety requirements to cover the costs of
11 monitoring, maintaining, and closing the facility, and of post-
12 closure security; and changes in the operation of the permitted
13 facility necessary to comply with the regulations promulgated
14 pursuant to Health and Safety Code section 25202. DHS may place
15 other conditions on such a permit consistent with the HWCA.
16 Section 25202 provides that compliance with the conditions set
17 forth in a hazardous waste facilities permit and with DHS
18 regulations is necessary to sustain the validity of such a
19 permit. Title 22, CCR section 66374(a), moreover, provides that
20 any noncompliance with the conditions set forth in a hazardous
21 waste facilities permit "is grounds for enforcement action; for
22 permit termination, revocation and reissuance, or modification;
23 or for denial of a permit renewal application."

24 13. Section 25189(b) of the Health and Safety Code
25 imposes liability for a civil penalty upon any person who
26 intentionally or negligently violates any provision of the HWCA
27 or any permit, rule, regulation, standard, or requirement issued

1 or promulgated pursuant to the HWCA. Such a civil penalty may
2 not exceed \$25,000 for each violation of a separate provision or,
3 for continuing violations, \$25,000 for each day that a violation
4 continues.

5 14. Sections 25189(c) and 25189(d) of the Health and
6 Safety Code impose liability for a civil penalty upon any person
7 who intentionally or negligently disposes or causes the disposal
8 of any hazardous waste at an unauthorized point. Such a civil
9 penalty may not exceed \$25,000 for each violation or, for
10 continuing violations, \$25,000 for each day that a violation
11 continues.

12 15. Section 25189.2(b) of the Health and Safety Code
13 imposes liability for a civil penalty upon any person who non-
14 intentionally and non-negligently violates any provision of the
15 HWCA or any permit, rule, regulation, standard, or requirement
16 issued or promulgated pursuant to the HWCA. Such a civil penalty
17 may not exceed \$10,000 for each violation of a separate provision
18 or, for continuing violations, \$10,000 for each day that a
19 violation continues.

20 16. Section 25189.2(c) of the Health and Safety Code
21 imposes liability for a civil penalty upon any person who non-
22 intentionally and non-negligently disposes or causes the disposal
23 of any hazardous waste at an unauthorized point. Such a civil
24 penalty may not exceed \$10,000 for each violation or, for
25 continuing violations, \$10,000 for each day that a violation
26 continues.

27 //

1 17. Section 25181 of the Health and Safety Code
2 provides that when DHS determines that any person has engaged in,
3 is engaged in, or is about to engage in any act or practice which
4 constitutes or will constitute a violation of any provision of
5 the HWCA, or any rule, regulation, permit, covenant, standard,
6 requirement, or order issued, promulgated, or executed
7 thereunder, and when requested by DHS, the Attorney General may
8 apply for an order enjoining that act or practice, or for an
9 order directing compliance with the provision, rule, regulation,
10 permit, covenant, standard, requirement or order violated or
11 threatened with violation. Upon a showing by DHS that such
12 person has engaged in or is about to engage in any such act or
13 practice, the Superior Court may grant a permanent or temporary
14 injunction, restraining order, or any other appropriate order.

15 18. Section 25184 of the Health and Safety Code
16 provides that in any civil action brought pursuant to the HWCA in
17 which a temporary restraining order, preliminary injunction, or
18 permanent injunction is sought, DHS need not allege or prove at
19 any stage of the proceeding that irreparable damage would occur
20 should the temporary restraining order, preliminary injunction,
21 or permanent injunction not issue, or that the remedy at law is
22 inadequate, and the temporary restraining order, preliminary
23 injunction, or permanent injunction shall issue without such
24 allegations and without such proof.

25 STATEMENT OF THE CASE

26 19. DHS, in the name of the People of the State of
27 California, seeks civil penalties and injunctive relief pursuant

1 to sections 25189, 25189.2, 25181 and 25184 of the California
2 Health and Safety Code for repeated and continuing violations by
3 Sandoz of the HWCA, which governs hazardous waste storage,
4 transportation, treatment, and disposal.

5 GENERAL ALLEGATIONS

6 20. Sandoz operates a hazardous waste facility at 1990
7 Bay Road, East Palo Alto, CA 94303 ("the Bay Road Facility").
8 Sandoz generates hazardous wastes at the Bay Road Facility,
9 manufactures biorational insect control agents and operates as a
10 storage and transfer station facility.

11 21. On April 6, 1981, DHS issued Interim Status
12 Document No. CAT000611350 (the "ISD") to Zoecon Corporation
13 Chemicals Division ("Zoecon") for the Bay Road Facility. The ISD
14 allowed Zoecon and, upon the acquisition of Zoecon by Sandoz,
15 allowed Sandoz to operate that facility, subject to all
16 applicable laws and regulations, pending the issuance of a
17 hazardous waste facilities permit. The ISD set forth the legally
18 enforceable guidelines to be followed by Zoecon, and subsequently
19 Sandoz, for handling, storing, disposing and treating hazardous
20 materials and set forth training and safety requirements for the
21 Bay Road Facility.

22 22. On information and belief, Sandoz acquired Zoecon
23 on or about March 25, 1983. Sandoz continued to operate the Bay
24 Road Facility under the name Zoecon, submitting an Operating Plan
25 for the facility to DHS on or about March 2, 1984, in the name of
26 Zoecon Corporation. By acquiring Zoecon, and continuing to
27 operate the Bay Road Facility under the name Zoecon, Sandoz

1 assumed all of Zoecon's obligations under the ISD and under the
2 California Health and Safety Code, and the regulations adopted
3 pursuant thereto, in connection with the operation of that
4 facility.

5 23. On February 19, 1985, DHS issued to Zoecon
6 Hazardous Waste Facility Permit No. CAT000611350 ("HWFP") for
7 storage and/or treatment of hazardous waste at the Bay Road
8 Facility. The HWFP replaced the ISD issued to Zoecon. The HWFP
9 was issued in the name of Zoecon because the Bay Road Facility
10 continued to operate under that name. (Sandoz submitted an
11 Operating Plan to DHS in 1984 under that name and did not notify
12 DHS of its desire to operate under the name Sandoz until on or
13 about November 24, 1986). The HWFP set forth the legally
14 enforceable guidelines to be followed by Sandoz, which owned
15 Zoecon and was operating under that name, for handling, storing,
16 disposing and treating hazardous materials, and set forth
17 training and safety requirements, for the Bay Road Facility.

18 24. On January 16, 1986, July 13, 1987 and January 29,
19 1988, DHS observed or learned of violations of applicable
20 statutes and regulations, and the ISD and HWFP, at Sandoz's Bay
21 Road Facility.

22 FIRST CAUSE OF ACTION

23 (Negligent or Intentional Violations)

24 25. Paragraphs 1 through 24 are realleged as if fully
25 set forth herein.

26 26. In operating the Bay Road Facility, Sandoz has
27 committed the following violations of applicable statutes,

1 regulations, the ISD, and the HWFP, as set forth in paragraphs 27
2 through 40.

3 27. Sandoz failed to notify DHS of physical
4 alterations made to the permitted portion of the Bay Road
5 Facility, including but not limited to the addition of a second
6 pump to the pump system serving the aqueous waste tanks. These
7 alterations were made at some time prior to January 16, 1986;
8 Sandoz did not notify DHS of the alterations until November 25,
9 1986. By making these physical alterations and failing to notify
10 DHS thereof, Sandoz violated Title 22, CCR section 66374(1), and
11 HWFP section II(6)(1).

12 28. Commencing in or about 1981 and continuing to the
13 present, Sandoz stored hazardous wastes, including but not
14 limited to 2, 4, 5-T (2, 4, 5 trichlorophenoxyacetic acid),
15 organophosphate pesticides, pentac (bis (pentachloro 2, 4
16 cyclopentadien-1-yl)), waste cycloprate (hexadecyl
17 cyclopropanecarboxylate) and waste NMP (n-methyl pyrrolidone),
18 for longer than one year in violation of California Health and
19 Safety Code section 25201, ISD section II(1)(a)-(b), and HWFP
20 section IV(1)(a).

21 29. Commencing on or about December 20, 1983, and
22 continuing to the present, Sandoz inadequately labelled drums
23 containing hazardous wastes. More specifically, on January 16,
24 1986, and again on July 13, 1987, drums with labels marked "2, 4,
25 5-T" did not include (a) the composition and physical state of
26 the waste and (b) a statement or statements calling attention to
27 //

1 the particular hazardous properties of the waste. The foregoing
2 constituted violations of Title 22, CCR section 66508(c)(1)-(2).

3 30. Commencing on or about December 20, 1983, and
4 continuing to the present, Sandoz failed to conduct detailed
5 physical and chemical analyses of the contents of several
6 hazardous waste containers at the Bay Road Facility. More
7 specifically, Sandoz had no detailed chemical and physical
8 analyses of the contents of the drums labelled "2, 4, 5-T," nor
9 of the drums containing NMP ("Still Bottoms - NMP distillation")
10 waste. The foregoing constituted violations of Title 22, CCR
11 section 67102 (a)(1)&(3), ISD section III(3)(a), and HWFP section
12 III(6)(b).

13 31. On or about January 19, 1988, Sandoz disposed of
14 hazardous waste at an unauthorized point at the Bay Road
15 Facility, in violation of California Health and Safety Code
16 section 25189(c) or California Health and Safety Code section
17 25189(d).

18 32. On at least one occasion, Sandoz failed to submit
19 to DHS a written report describing an emergency at the Bay Road
20 Facility within 15 days of the incident, thereby violating Title
21 22, CCR sections 67145(j) and 67167(a), and HWFP sections
22 II(6)(k)(2) and III(17)(d)(1). More specifically, Sandoz failed
23 to report to DHS an emergency which occurred at the Bay Road
24 Facility on or about January 19, 1988.

25 33. Commencing at some time prior to March 23, 1988
26 and continuing until on or about January 11, 1989, Sandoz failed
27 to establish and demonstrate to DHS financial assurance for

1 closure of the Bay Road Facility, in violation of Title 22, CCR
2 section 67003 and HWFP section III (19)(b). Specifically,
3 Sandoz's estimate of the cost of closing the Bay Road Facility
4 exceeded by more than \$160,000 the amount of financial assurance
5 Sandoz had established and demonstrated to DHS.

6 34. Commencing at some time prior to January 16, 1986,
7 and continuing until the present, Sandoz failed to revise its
8 closure plan to reflect changes in the operations and facility
9 design of the Bay Road Facility. For example, Sandoz's closure
10 plan for the Bay Road Facility was and continues to be deficient
11 in that it fails to include a description for closure of the dual
12 pump system serving the aqueous waste tanks. The foregoing
13 constitutes a violation of Title 22, CCR section 67212(c) and
14 HWFP section III(18)(a)(2).

15 35. Sandoz's Closure Plan is deficient in that it does
16 not contain a description of the steps needed to
17 decontaminate facility equipment during closure:

- 18 a. A list of equipment, containers and
19 structures requiring
decontamination.
- 20 b. Sampling and analytical methods for
21 determining whether contaminated
soils are hazardous wastes.
- 22 c. Testing criteria for determining
23 adequacy of cleanup.
- 24 d. Methods of treatment or disposal of
contaminated soils and residues.

25 Each of the foregoing is in violation of Title 22, section
26 67212(b)(3).

27 //

1 36. Sandoz's Closure Plan does not include a schedule
2 for final closure activities, in violation of Title 22, CCR
3 section 67212(b)(4).

4 37. On information and belief, on or about February 2,
5 1988, Sandoz sent an extremely hazardous waste, 2, 4, 5-T, for
6 disposal at an off-site disposal facility, although Sandoz did
7 and does not have an Extremely Hazardous Waste Disposal Permit,
8 in violation of Title 22, CCR section 66570.

9 38. Commencing on or about December 20, 1983 and
10 continuing until on or about February 19, 1985, Sandoz stored
11 hazardous wastes, including without limitation 2, 4, 5-T,
12 organophosphate pesticides and pentac, which were not listed in
13 its Part A application for an Interim Status Document, in
14 violation of ISD section I(4)(a).

15 39. Commencing on or about February 20, 1985 and
16 continuing until at least February 2, 1988, Sandoz stored
17 hazardous wastes, including without limitation 2, 4, 5-T,
18 organophosphate pesticides and pentac, which were not listed in
19 its Operating Plan, incorporated by reference in the HWFP, in
20 violation of HWFP section III(2)(b).

21 40. On or about January 16, 1986, Sandoz violated
22 Title 22, CCR section 67105(d)(4) and HWFP section III(9)(c)(4)
23 in that the training records at the Bay Road Facility did not
24 indicate that all elements of the Bay Road Facility's written
25 training plan had been completed.

26 41. For each of the violations set forth in paragraphs
27 27 through 34, inclusive, and 37 through 40, inclusive, Sandoz is

1 subject to civil penalties pursuant to Health and Safety Code
2 sections 25189(b), 25189(c) and/or 25189(d).

3 42. Sandoz is liable for civil penalties according to
4 proof, pursuant to Health and Safety Code sections 25189(b),
5 25189(c) and/or 25189(d), for each and every separate violation
6 set forth in paragraphs 27 through 34, inclusive, and 37 through
7 40, inclusive.

8 SECOND CAUSE OF ACTION

9 (Non-Intentional and Non-negligent Violations)

10 43. Paragraphs 1 through 40, inclusive, are realleged
11 as if fully set forth herein.

12 44. For each of the violations set forth in paragraphs
13 27 through 34, inclusive, and 37 through 40, inclusive, Sandoz is
14 subject to civil penalties pursuant to Health and Safety Code
15 sections 25189.2(b) and/or 25189.2(c).

16 45. Sandoz is liable for civil penalties according to
17 proof, pursuant to Health and Safety Code sections 25189.2(b)
18 and/or 25189.2(c), for each and every separate violation set
19 forth in paragraphs 27 through 34, inclusive, and 37 through 40,
20 inclusive.

21 THIRD CAUSE OF ACTION

22 (Injunctive Relief)

23 46. Paragraphs 1 through 40, inclusive, are realleged
24 as if fully set forth herein.

25 47. Sandoz has engaged in acts or practices which
26 constitute violations of the HWCA, of the regulations issued or
27 promulgated thereunder, the ISD issued thereunder, and the HWFP

1 issued thereunder, as more fully stated in paragraphs 27 through
2 40, inclusive, set forth above.

3 48. Plaintiffs are entitled to a preliminary and
4 permanent injunction enjoining Sandoz from further violations of
5 the Act, and of the rules, regulations, permits, covenants,
6 standards, requirements, and orders issued, promulgated and
7 executed thereunder.

8 FOURTH CAUSE OF ACTION

9 (Investigative Costs)

10 49. Paragraphs 1 through 48, inclusive, are realleged
11 as if fully set forth herein.

12 50. DHS incurred investigation costs to determine
13 whether Sandoz has been in compliance with the State's hazardous
14 waste control laws. DHS has expended and will continue to expend
15 State funds for such costs of investigation in order to determine
16 whether defendants are in compliance with the State's hazardous
17 waste control laws and whether defendants are complying with any
18 injunction issued by the Court. Sandoz is liable to plaintiffs
19 for such costs of investigation.

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

PRAYER

WHEREFORE, plaintiffs pray that the Court:

1. Grant civil penalties according to proof against Sandoz pursuant to the First and Second Causes of Action; and
2. Grant plaintiffs preliminary and permanent injunctions enjoining Sandoz from further violations of the HWCA, or of the rules, regulations, permits, covenants, standards, requirements, and orders issued, promulgated and executed thereunder; and
3. Grant plaintiffs their costs of investigation; and
4. Grant plaintiffs their costs of suit herein; and
5. Grant such other and further relief as the Court deems just and proper.

DATED: January 18, 1990

JOHN K. VAN DE KAMP
Attorney General
ANDREA SHERIDAN ORDIN
Chief Assistant Attorney General
THEODORA BERGER
Assistant Attorney General

By: 

KEVIN JAMES
Deputy Attorney General
Attorneys for Plaintiffs

EXHIBIT E-3

STATE OF CALIFORNIA - ENVIRONMENTAL PROTECTION AGENCY

PETE WILSON, Governor

DEPARTMENT OF TOXIC SUBSTANCES CONTROL
700 HEINZ AVENUE, SUITE 200
BERKELEY, CALIFORNIA 94710

March 5, 1992



CERTIFIED MAIL

Mr. Thomas Vanden Bosch
Plant Manager
Sandoz Crop Protection
1990 Bay Road
East Palo Alto, California 94303

EPA ID No. CAT000611350

Dear Mr. Vanden Bosch:

Please find enclosed the Department of Toxic Substances Control's Enforcement Order (FO 91/92 2-003) and related documents as a result of violations found during the inspection conducted at Sandoz Crop Protection, 1990 Bay Road, East Palo Alto, San Mateo County on July 31 and August 1, 1991.

As indicated in the enclosures, you have a right to a formal hearing. An informal conference is scheduled for March 16, 1992 at 10 A.M. in order to discuss and attempt to resolve this matter with the Department.

Please sign and return the first two pages of the Enforcement Order and keep a copy for your records.

If you have any questions regarding this matter, please contact Maria Soria at (510) 540-3883.

Sincerely,

A handwritten signature in dark ink, appearing to read "Maria Soria", is written over the typed name.

Maria Soria
Hazardous Materials Specialist
Region 2
Surveillance and Enforcement

A handwritten signature in dark ink, appearing to read "Denise Tsuji", is written over the typed name.

Denise Tsuji
Unit Chief
Region 2
Surveillance and Enforcement

Enclosures

Cert. Mail No.: P 106 353 491

cc: See next page

MAR-11-1992 14:07 FROM SANDOZ 1990

TO

DP3PDMAP,FIN,SA

P.04

Mr. Thomas Vanden Bosch
March 5, 1992
Page Two

cc: William Lent
San Mateo County Environmental Health
Hazardous Materials Section
590 Hamilton Street
Redwood City, California 94063

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Name: Sandoz Crop Protection

Status: New York Corporation

Address: 1990 Bay Road

East Palo Alto, CA 94303

EPA ID # CAT000611350

Respondent

) Docket No. FO 91/92 2-003

) ENFORCEMENT ORDER

) Health and Safety Code

) Section 25187

1. On July 31 and August 1, 1991, the Department of Toxic Substances Control (Department) inspected Sandoz Crop Protection, which is owned or operated by Respondent.

2. The Department hereby determines that Respondent violated the Hazardous Waste Control Act (Health & Safety Code section 25100 et seq.) and related requirements and assesses a penalty of \$ 3900.00, as specified on page 2 et seq., Determination of Violations and Penalties.

3. Payment is due within 30 days from the effective date of the Order. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the penalty payment to:

Department of Toxic Substances Control
Accounting Office
400 P Street, 4th Floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Chief, Surveillance and Enforcement Branch
Department of Toxic Substances Control
700 Heinz Avenue, Bldg F, Suite 201
Berkeley, CA 94710

4. Respondent shall begin to correct the violations immediately. Respondent shall complete corrective action and

send a signed Certification of Compliance to the person who issued this Order within 30 days of the date of issuance.

Date of Issuance: March 5, 1992.

Maria Soria

(Signature)

Name and Title: Maria Soria, HMS

Department of Toxic Substances Control

Address 700 Heinz Avenue, Bldg F, Suite 201

Berkeley, CA 94710

Telephone No. (510) 540-3883

ACKNOWLEDGMENT OF RECEIPT

Without admitting the violations, I acknowledge receipt of this Enforcement Order, Statement to Respondent, Certification of Compliance form, and two copies of the form entitled Notice of Defense.

Dated: March 11, 1992

T.H. Vanden Bosch

Signature

T.H. VANDEN BOSCH, PLANT MANAGER

Print Name and Title

PROOF OF SERVICE

1. I served the

a. ☒ Enforcement Order☐ Statement to Respondent☐ 2 Blank Notice of Defense Forms☐ Other (specify): _____b. On Respondent (Name): Sandoz Crop Protection1990 Bay Road, East Palo Alto, CA 94303c. By serving: ☒ Respondent☐ Other (Name and Title or relationship
to Respondent): _____2. a. ☐ By personally delivering copies to (address) _____

at (time) _____ on (date) _____.

b. ☐ By mailing copies by first-class certified mail,
Certified Mail Receipt No. _____, return receipt
requested, in a sealed envelope addressed to:

3. My name, business address, and telephone number are:

Naomia R. CoxDepartment of Toxic Substances Control700 Hains Avenue, Suite 200Berkeley, CA 94710

I declare under penalty of perjury that the foregoing is true and
correct and that this declaration is executed on (date) March 5, 1992
at (place) Berkeley, California.

Naomia R. Cox
(Signature)

DETERMINATION OF VIOLATIONS AND PENALTIESRespondent: Sandoz Crop ProtectionDocket Number: FD 91/92 2-00316. / ☒ Health and Safety Code, section 25201:

On or about July 31 and August 1, 1991, Respondent violated Health and Safety Code, section 25201 in that Respondent operated a storage facility by storing hazardous waste for more than 90 days without having a valid hazardous waste facility permit, to wit:

one drum of pesticide residue debris labeled as hazardous waste, numbered 2461, and located in the HWSA had an accumulation start date of April 25, 1991

(PENALTY: \$600)

17. / ☐ Health and Safety Code, section 25250.7:

On or about _____, Respondent violated Health and Safety Code, section 25250.7 in that Respondent intentionally contaminated used oil with other hazardous waste, other than minimal amounts of vehicle fuel, to wit: _____

(PENALTY: \$500)

18. / ☐ Health and Safety Code, section 25250.8(b)(1):

On or about _____, Respondent violated Health and Safety Code, section 25250.8(b)(1) in that Respondent's driver failed to prepare a manifest for the used oil which Respondent picked up prior to relinquishing responsibility for that vehicle to another driver, to wit: _____

(PENALTY: \$500 per manifest

\$500 x ____ = \$____)

19. / ☐ Health and Safety Code, section 25250.8(b)(2):

On or about _____, Respondent violated Health and Safety Code section 25250.8(b)(2) in that Respondent failed to complete the hauler and generator portion of the manifest, complete the manifest at the end of each day, and/or sign or date the manifest, to wit: _____

(PENALTY: \$300 per manifest

\$300 x ____ = \$____)

20. / ☐ Health and Safety Code, section 25250.8(b)(3):

On or about _____, Respondent violated Health and Safety Code, section 25250.8(b)(3) in that Respondent failed to attach to the front of each manifest a receipt for each quantity of used oil received, to wit: _____

(PENALTY: \$400 per manifest

\$400 x ____ = \$____)

DETERMINATION OF VIOLATIONS AND PENALTIESRespondant: Sandoz Crop ProtectionDocket Number: FD 91/92 2-003

106. / ☒ Title 22, Cal. Code Regs., section 66264.15(d) or 66265.15(d):
On or about July 31 and August 1, 1991, Respondent violated title 22,
Cal. Code Regs., section 66264.15(d) or 66265.15(d) in that
Respondent failed to record required information in the inspection
record, to wit: the inspection logs for the solvent and aqueous waste
tanks did not indicate the time the inspection was conducted.
(PENALTY: \$100/element
\$500 maximum
\$100 x 1 = \$100
107. / ☐ Title 22, Cal. Code Regs., section 66264.15(d) or 66265.15(d):
On or about _____, Respondent violated title 22,
Cal. Code Regs., section 66264.15(d) or 66265.15(d) in that
Respondent failed to keep the records of inspections for 3 years
from the date of inspection, to wit: _____
(PENALTY: \$400
\$1200 maximum
\$400 x ____ = \$ ____
108. / ☐ Title 22, Cal. Code Regs., section 66264.16(a)(2) or
66265.16(a)(2):
On or about _____ Respondent violated title 22,
Cal. Code Regs., section 66264.16(a)(2) or 66265.16(a)(2) in that
the facility's training program was not directed by a person
trained in hazardous waste management procedures. (PENALTY: \$200)
109. / ☐ Title 22, Cal. Code Regs., section 66264.16(b) or 66265.16(b):
On or about _____ Respondent violated title 22,
Cal. Code Regs., section 66264.16(b) or 66265.16(b) in that the
employees named below did not complete the required training
program and worked in unsupervised positions prior to completing
the training requirements: _____
(PENALTY: \$400
110. / ☐ Title 22, Cal. Code Regs., section 66264.16(c) or 66265.16(c):
On or about _____ Respondent violated title 22
Cal. Code Regs., section 66264.16(c) or 66265.16(c) in that the
following facility personnel had not taken part in an annual
review of their initial training: _____
(PENALTY: \$30

DETERMINATION OF VIOLATIONS AND PENALTIESRespondent: Sandoz Crop ProtectionDocket Number: FO 91/92 2-003

208. / ☐ Title 22, Cal. Code Regs., section 66268.7(a)(5)
On or about _____, Respondent violated title
Cal. Code Regs., section 66268.7(a)(5) by failing to retain
site all supporting data and/or all waste analysis data used
determining whether Respondent's waste was restricted from
disposal, to wit: _____

(PENALTY \$200)

209. / ☒ Title 22, Cal. Code Regs., section 66268.7(a)(6)
On or about July 31 and August 1, 1991, Respondent violated title
Cal. Code Regs., section 66268.7(a)(6) by failing to retain
site a copy of all notices, certifications, demonstrations, wa
analysis data, and other documentation produced pursuant
section 66268.7 for at least five years from the date that wa
was sent for treatment, storage or disposal, to w
copies of LDR notifications and certifications were not kept on-site for 1
manifests for the years 1990 and 1991.

(PENALTY \$200 per shipment

Maximum 8 shipment

\$200 x 16 = \$3200

210. / ☐ Title 22, Cal. Code Regs., section 66268.7(b)(4)
On or about _____, Respondent violated title
Cal. Code Regs., section 66268.7(b)(4) as a treatment facility
failing to send a notice with each waste shipment to the 1
disposal facility with the required information, to wit: _____

(PENALTY \$400 per shipment

Maximum \$2000

\$400 x ____ = \$_____

211. / ☐ Title 22, Cal. Code Regs., section 66268.7(b)(5)
On or about _____, Respondent violated title
Cal. Code Regs., section 66268.7(b)(5) as a treatment facility
failing to send a certification with each shipment of waste
treatment residue of a restricted waste to the land dispo
facility stating that the waste or treatment residue has b
treated in compliance with applicable treatment standards, to v

(PENALTY \$400 per shipment

Maximum \$2000

\$400 x ____ = \$_____

STATEMENT TO RESPONDENT

In the Matter of:

Docket No. FO-91/92 2-003Respondent: Sandoz Crop Protection

An Enforcement Order (Order) is attached to this statement and is hereby served upon you. The Order has been filed by the Department of Toxic Substances Control (Department).

You may choose:

- . to comply with the Order immediately,
- . to discuss the matter with the Department at the Informal Conference scheduled below, or
- . to pursue a formal appeal.

COMPLIANCE

If you wish to comply with the Order, correct the violations as indicated in paragraph 3 of the Order and send to the person who issued the Order:

- . a signed Certification of Compliance, and
- . a check for the amount of the penalty made out to Department of Toxic Substances Control.

INFORMAL CONFERENCE

If you wish to discuss this matter with the Department, an Informal Conference has been scheduled for:

Date: March 16, 1992
Time: 10:00 A. M.
Location: 700 Heinz Avenue, Bldg E, Suite 201
Berkeley, CA 94710

You may inform the Department at the conference whether you wish to pursue a formal appeal or waive your right to a formal hearing, as explained below.

FORMAL APPEAL RIGHTS

YOU MUST FILE A WRITTEN REQUEST FOR A HEARING WITHIN FIFTEEN DAYS IF YOU WISH TO APPEAL.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Department within fifteen

days after you received a copy of the Order, you will be deemed to have waived your right to a hearing in this matter. If you do not file a timely hearing request, the Enforcement Order becomes final automatically.

The request for a hearing may be made by delivering or mailing one copy of the enclosed form entitled "Notice of Defense" or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code to the person who issued the Order at the address following his or her signature on the Order or by delivering the Notice of Defense to the person conducting the Informal Conference at the time and place specified above.

The enclosed Notice of Defense, if signed and filed with the Department is deemed a specific denial of all parts of the Order, but you will not be permitted to raise any objection to the form of the Order unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen days after service of the Order.

If you file a Notice of Defense within the time permitted, a hearing on the allegations made in the Order will be conducted by the Office of Administrative Hearings of the Department of General Services in accordance with the procedures specified in Health and Safety Code section 25187 and Government Code section 11507 et seq.

GENERAL INFORMATION

You may but are not required to be represented by counsel at any or all stages of these proceedings.

The hearing may be postponed for good cause. If you have good cause, you must notify the Department within ten working days after you discover the good cause. Failure to notify the Department within ten days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are attached. If you desire the names and addresses of witnesses or an opportunity to inspect and copy items in possession, custody, or control of the Department, you may contact the person issuing the Order at the address indicated at the end of the Order.

GOVERNMENT CODE**Section 11507.3. Exclusivity of discovery provisions**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

Section 11507.6. Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after such service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to such person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that such reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e),

inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

(g) In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (j) of Section 11513. This subdivision is intended only to limit the scope of discovery; it is not intended to effect the methods of discovery allowed under this section.

Section 11507.7. Petition to compel discovery; Order; Sanctions

(a) Any party claiming his request for discovery pursuant to Section 11507.6 has not been complied with may serve and file a verified petition to compel discovery in the superior court for the county in which the administrative hearing will be held, naming as respondent the party refusing or failing to comply with Section 11507.6. The petition shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why such matter is discoverable under this section, and the ground or grounds of respondent's refusal so far as known to petitioner.

(b) The petition shall be served upon respondent party and filed within 15 days after the respondent party first evidenced his failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing except upon order of the court after motion and notice and for good cause shown. In acting upon such motion, the court shall consider the necessity and reasons for such discovery, the diligence or lack of diligence of the moving party, whether the granting of the motion will delay the commencement of

the administrative hearing on the date set, and the possible prejudice of such action to any party.

(c) If from a reading of the petition the court is satisfied that the petition sets forth good cause for relief, the court shall issue an order to show cause directed to the respondent party; otherwise the court shall enter an order denying the petition. The order to show cause shall be served upon the respondent and his attorney of record in the administrative proceeding by personal delivery or certified mail and shall be returnable no earlier than 10 days from its issuance nor later than 30 days after the filing of the petition. The respondent party shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(d) The court may in its discretion order the administrative proceeding stayed during the pendency of the proceeding, and if necessary for a reasonable time thereafter to afford the parties time to comply with the court order.

(e) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that such matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under such provisions, the court may order lodged with it such matters as are provided in subdivision (b) of Section 915 of the Evidence Code and examine such matters in accordance with the provisions thereof.

(f) The court shall decide the case on the matters examined by the court in camera, the papers filed by the parties, and such oral argument and additional evidence as the court may allow.

(g) Unless otherwise stipulated by the parties, the court shall no later than 30 days after the filing of the petition file its order denying or granting the petition, provided, however, the court may on its own motion for good cause extend such time an additional 30 days. The order of the court shall be in writing setting forth the matters or parts thereof the petitioner is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the clerk upon the parties. Where the order grants the petition in whole or in part, such order shall not become effective until 10 days after the date the order is served by the clerk. Where the order denies relief to the petitioning party, the order shall be effective on the date it is served by the clerk.

(h) The order of the superior court shall be final and not subject to review by appeal. A party aggrieved by such order, or any part thereof, may within 15 days after the service

of the superior court's order serve and file in the district court of appeal for the district in which the superior court is located, a petition for a writ of mandamus to compel the superior court to set aside or otherwise modify its order. Where such review is sought from an order granting discovery, the order of the trial court and the administrative proceeding shall be stayed upon the filing of the petition for writ of mandamus, provided, however, the court of appeal may dissolve or modify the stay thereafter if it is in the public interest to do so. Where such review is sought from a denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error.

(i) Where the superior court finds that a party or his attorney, without substantial justification, failed or refused to comply with Section 11507.6, or, without substantial justification, filed a petition to compel discovery pursuant to this section, or, without substantial justification, failed to comply with any order of court made pursuant to this section, the court may award court costs and reasonable attorney fees to the opposing party. Nothing in this subdivision shall limit the power of the superior court to compel obedience to its orders by contempt proceedings.

CERTIFICATION OF COMPLIANCE

In the Matter of: Docket No. FD 91/92 2-003

Respondent: Sandoz Crop Protection

I certify under penalty of law that:

1. Respondent has corrected the violations specified in the above-entitled action.

2. I have personally examined any documentation attached to this certification to establish that the violations have been corrected.

3. Based on my examination of the attached documentation and inquiry of the individuals who prepared or obtained it, I believe that the information is true, accurate, and complete.

4. I am authorized to file this certification on behalf of the Respondent.

5. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

DATED: _____

Signed: _____

Printed or Typed Name: _____

Title: _____

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:
Sandoz Crop Protection
1990 Bay Road
East Palo Alto, CA 94303
EPA ID No. CAT000611350

Respondent.

Docket No. FD 91/92 2-003

NOTICE OF DEFENSE

Health and Safety Code
Section 25187(c)

I, the undersigned Respondent, acknowledge receipt of a copy of the Enforcement Order, Statement to Respondent, Government Code sections 11507.5, 11507.6, and 11507.7, and two copies of a Notice of Defense.

I request a hearing to permit me to present my defense to the allegations contained in the Enforcement Order.

Dated: _____

(Signature of Respondent)

Please Type or Print the Name and Mailing
Address of Respondent

(Name)

(Street Address)

(City)

(State)

(Zip)

(Telephone Number)

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:
Sandoz Crop Protection
1990 Bay Road
East Palo Alto, CA 94303
EPA ID No. CAT000611350

Respondent.

Docket No. FO 91/92 2-003

NOTICE OF DEFENSE

Health and Safety Code
Section 25187(c)

I, the undersigned Respondent, acknowledge receipt of a copy of the Enforcement Order, Statement to Respondent, Government Code sections 11507.5, 11507.6, and 11507.7, and two copies of a Notice of Defense.

I request a hearing to permit me to present my defense to the allegations contained in the Enforcement Order.

Dated: _____

(Signature of Respondent)

Please Type or Print the Name and Mailing
Address of Respondent

(Name)

(Street Address)

(City)

(State)

(Zip)

(Telephone Number)

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